

THE BIHAR AND ORISSA CODE.

VOLUME III.

PART I.—BENGAL ACTS, 1891 TO 1912.

PART II.—BIHAR AND ORISSA ACTS, 1913 TO 1915.

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THE BIHAR AND ORISSA CODE

In Four Volumes :

CONTAINING

**The Regulations, Ordinance and Local
Acts in force in the Province of
Bihar and Orissa;**

WITH

Tables and Lists, Notes as to Scheduled Districts and
De-Regulationised Tracts, and Notifications declaring
Enactments in force in, or extending Enactments,
to such Districts and Tracts,
and a Full Index.

FIRST EDITION

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VOLUME III :

Part I.—Bengal Acts, 1891 to 1912.
Part II.—Bihar and Orissa Acts, 1913 to 1915.



CALCUTTA

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CONTENTS.

	PAGE
PREFACE.	
CHRONOLOGICAL TABLE OF ENACTMENTS PRINTED IN THIS VOLUME	i.
ENACTMENTS <i>in extenso</i> —	
PART I.—BENGAL ACTS, 1891 to 1912	1
PART II.—BIHAR AND ORISSA ACTS, 1913 to 1915	383

**For Acts of the Bihar and Orissa Council
passed in 1915, 1916, 1917 and 1918 see
Volume IV.**

Chronological Table of Enactments printed in this Volume.

[With respect to the entry of repealing enactments in column 4 of this table, the following has been the ordinary practice :—

- (1) where an enactment has been totally repealed more than once, the latest repealing enactment has alone been entered;
- (2) where an enactment has been partially repealed and afterwards totally repealed, the total repeal only has been entered : a repeal of the unrepealed portions of an enactment is treated as a total repeal;
- (3) partial repeals covered by later partial repeals have not been entered;
- (4) local repeals covered by later local repeals have not been entered;
- (5) where an enactment has been locally repealed and afterwards repealed by an enactment whose operation is unrestricted, the later repealing enactment has alone been entered.]

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected in Bihar and Orissa by legislation	Page.

I.—BENGAL ACTS.[¹]

1891	2	The Calcutta Hackney-carriage Act, 1891.	S. 1 (2) rep., Act 1 of 1903 . . .	5
1892	1	The Bengal Village-chaukidari (Amendment) Act, 1892.	Short title given, Act 1 of 1903 . . S. 3 rep, in pt., Act 5 of 1897. Ss. 2 (1), 6, 12 rep, Act 1 of 1903.	29
1894	4	The Bengal Municipal (Amendment) Act, 1894.	Short title given, Act 1 of 1903 . . S. 37 rep., in pt., Ben. Act 6 of 1894 S. 7 (1) rep., in pt., s. 31 rep., Ben. Act 2 of 1896, s. 19. S. 1 rep., in pt., ss. 5, 9, 46, 51, 77, 83, 89 rep., s. 34 am, Act 1 of 1903.	33
1895	3	The Land Records Maintenance Act, 1895.	....	45
"	8	The Bengal Sanitary Drainage Act, 1895.	S. 1 (3) rep, Act 1 1903 . . .	59
1896	1	The Protection of Muhammadan Pilgrims Act, 1896.	....	73
"	2	The Bengal Municipal (Amendment) Act, 1896.	Short title given, Act 1 of 1903 . . Sa. 1, 9 (4), 19 rep., Act 1 of 1903	81

[¹] The expression " Ben. Act " or " Bengal Act," as used in this Code, means an Act made by the Lieutenant-Governor of Bengal in Council—*cf.* the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 3, cl. (6), *post*, p. 140.

Chronological Table of Enactments printed in this Volume—contd.

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected in Bihar and Orissa by legislation.	Page.

1.—BENGAL ACTS—*contd.*

1897.	5	The Estates Partition Act, 1897.	....	39
1898	3	The Bengal Tenancy (Amendment) Act, 1898.	S. 1 rep., in pt., s. 11 rep., Act 1 of 1903.	135
1899	1	The Bengal General Clauses Act, 1899.	S. 2 rep., ss. 3 (6), 25 am., Act 1 of 1903. S. 3 (6) am., Ben. Act 1 of 1914.	
„	2	The Bengal Civil Court Amins Act, 1899.	Short title given, Act 1 of 1903	151
1900.	3	The Bengal Cruelty to Animals Act, 1900.	....	153
1902	2	The Bengal Drainage (Amendment) Act, 1902.	....	157
1903	1	The Bengal Tenancy (Validation and Amendment) Act, 1903.	....	163
1904	1	The Bengal Tramways (Amendment) Act, 1904.	....	165
„	2	The Bengal Public Parks Act, 1904.	....	167
„	3	The Bengal Settled Estates Act, 1904.	S. 36 rep., in pt., Ben. Act 1 of 1914.	173
1905	3	The Bengal Smoke-nuisances Act, 1905.	....	197
1906	1	The Bengal Court of Wards (Amendment) Act, 1906.	....	205
1907	1	The Bengal Tenancy (Amendment) Act, 1907.	....
1908	3	The Puri Lodging House (Amendment) Act, 1908.	....

Chronological Table of Enactments printed in this Volume—contd.

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected in Bihar and Orissa by legislation.	Page.

1.—BENGAL ACTS—contd.

1903	5	The Bengal Local Self-Government (Amendment) Act, 1903.		21
"	6	The Chota-Nagpur Tenancy Act, 1908.	Ss. 47 and 248 am, new s. 214 ins.; B & O. Act 4 of 1914.	
1909	2	The Bengal Court of Wards (Amendment) Act, 1909.		
"	3	The Chota-Nagpur Encumbered Estates (Amendment) Act, 1909		
1910	2	The Bengal Municipal (Amendment and Validation) Act, 1910.		
"	4	The Bengal Cess (Amendment) Act, 1910.	....
1911	2	The Bengal Vaccination (Amendment) Act, 1911.		
"	3	The Bengal Local Government Act, 1911.	....
"	4	The Chota-Nagpur Encumbered Estates (Amendment) Act, 1911.	....
1912	2	The Bengal Mining Settlements Act, 1912.	....

2.—BIHAR AND ORISSA ACTS.

1913	1	The Bihar and Orissa Board of Revenue Act, 1913.	....
"	2	The Orissa Tenancy Act, 1913.	New Ch. XV ins.; ss. 212, 221, 225, 226 am., B. & O. Act 4 of 1914.	
1914	1	The Chota-Nagpur Rural Police Act, 1914.	...	

Chronological Table of Enactments printed in this Volume—concl'd.

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected in Bihar and Orissa by legislation.	Page

2.—BIHAR AND ORISSA ACTS.

1914	2	The Bihar and Orissa Ferries (Amendment) Act, 1914.	....
„	3	The Jharia Water Supply Act, 1914.	....
„	4	The Bihar and Orissa Public Demands Recovery Act, 1914.	....

THE BIHAR AND ORISSA CODE.

VOLUME III.

BENGAL ACTS, 1891 TO 1912, AND BIHAR AND ORISSA ACTS,
1913 TO 1915.

PART I.—BENGAL ACTS OF 1891 TO 1912, IN FORCE IN THE PROVINCE OF
BIHAR AND ORISSA.

BENGAL ACT 2 OF 1891.

(THE CALCUTTA HACKNEY-CARRIAGE ACT, 1891.)

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTION.

1. (1) Title.
(2) (*Commencement.*) *Repealed.*
(3) Application and extension of Act.
2. (1) Repeal.
(2) Savings.
3. Definitions.
4. Alteration of limits of Calcutta.
Proviso.

CHAPTER II.

REGISTRATION OF HACKNEY-CARRIAGES.

5. (1) Hackney-carriages to be registered annually.
(2) Registering Officer to be under control of Chairman of Commissioners.
(3) Appointment and removal of Registering Officer.
6. Time and duration of registry.
7. (1) Application for registry.
(2) Application may be granted or refused
(3) "Owner" of carriage.
8. (1) License to be delivered to owner.
(2) Duration of license.
9. Particulars of register and license
10. Fee for registration.

The Calcutta Hackney-carriage Act, 1891. [Ben. Act 2 of 1891.]

CHAPTER VIII.

BY-LAWS.

SECTION.

53. (1) Commissioners in meeting may make by-laws.
 (2) By-laws may be repealed or altered.
 (3) By-laws when to take effect.
 (4) By-laws to be published in Gazette.
 54. Penalty for infringement of by-laws.
-

CHAPTER IX.

PROSECUTIONS.

55. (1) Prosecutions to be instituted before Magistrate.
 (2) Procedure in case of prosecutions.
 (3) Fines how to be levied.
 56. Liability to fine when incurred.
 57. (1) Damage to property of Commissioners to be paid for.
 (2) Amount of damage to be determined by Magistrate.
 58. Compensation for groundless prosecution.
-

CHAPTER X.

MISCELLANEOUS.

59. (1) Property left in carriage or *palanquin* to be deposited in police-station.
 (2) Penalty for neglecting to do so.
 (3) Police-officer to enter particulars in book, and grant receipt.
 (4) Property to be returned to owner.
 When such property may be sold and how proceeds may be applied.
 60. Fees and fines how to be dealt with.
 61. (1) Appointment of officers when Act extended beyond Calcutta.
 (2) Modifications in Act when extended beyond Calcutta.
-

FIRST SCHEDULE.—Rates and fares to be paid for hackney-carriages.

SECOND SCHEDULE.—Rates and fares to be paid for *palanquins*.

Appendix.—List of places in Bihar and Orissa to which the Calcutta Hackney-carriage Act, 1891 (Ben. Act 2 of 1891), has been extended under section 1 thereof or in which the said Act is in force by virtue of section 2 (2) thereof.

BENGAL ACT 2 OF 1891.

(THE CALCUTTA HACKNEY-CARRIAGE ACT, 1891.)^[1]

(23rd September,

An Act to consolidate and amend the law relating to Hackney-Carriages and Palanquins in Calcutta.

Whereas it is expedient to consolidate and amend the law relating to hackney-carriages and *palanquins* in Calcutta;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Calcutta Hackney-carriage Act, Title 1891.

(2) (*Commencement*). *Rep. by the Amending Act, 1903 (1 of 1903).*

(3) It shall apply to Calcutta as hereinafter^[2] defined, and may be extended from time to time to any other town or place in Bengal^[3] by a notification^[4] published in the Calcutta Gazette. Application and extension of Act.

2. (1) Acts 5 of 1866 and 4 of 1878^[5] are hereby repealed.

Repeal

[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1891, Pt. IV, p. 12, and for Proceedings in Council, see *ibid.* Supplement, pp. 634 and 1311.

LOCAL EXTENT.—This Act is in force in certain towns and places in the Province of Bihar and Orissa being extended thereto by Notifications under section 1 (3). For a list of such towns and places to which Bengal Act 5 of 1866 was extended and the present Act is in force by virtue of the saving of extensions in section 2 (2), see Appendix, *post*, p. 25.

The application of the Act is barred in—

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I, p. 864; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 777.

PUBLIC PARKS.—For power to make rules to regulate the admission of carriages and the Bengal Public Parks Act, 1904 (Ben. Act 2 of 1904),

Province of Bihar and Orissa except the district of Sambalpur.

[2] For a list of notifications issued under section 1 (3) for Bihar and Orissa, see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VI.

[3] These are Acts of the Bengal Legislative Council.

(Secs. 3-4.)

(2) This repeal shall not affect the validity of anything done or suffered, or of any right, title, obligation or liability which may have accrued; and all appointments, extensions and registrations made, licenses issued, notifications published, penalties incurred, and other things duly done under any such enactments shall, so far as they are consistent with this Act, be deemed to have been respectively made, issued, published, incurred or done hereunder.

(3) All references made to any such enactment shall, as far as may be practicable, be deemed to be made to this Act.

(4) All proceedings now pending which may have been commenced under any such enactment shall be deemed to be commenced under this Act.

visions. 3. In this Act, unless there is something repugnant in the subject or context,—

(1) “Calcutta” (subject to the inclusion or exclusion of any local area by the Local Government under section 4) means Calcutta as defined by the Calcutta Municipal Consolidation Act, 1888; [1] Ben. Act 2 of 1888.

(2) “hackney-carriage” means any wheeled vehicle, drawn by horses and used for the conveyance of passengers which is kept or offered, or plies for hire by the hour or day or according to distance; but shall not include any carriage used wholly upon any railway or tramway;

(3) “horse” includes mule and pony;

(4) “stage-carriage” means any hackney-carriage, the passengers in which shall be charged or shall pay separate and distinct fares, or shall be charged or pay, at the rate of separate and distinct fares, for their respective places or seats therein or conveyance thereby.

(5) “the Commissioners” means the Corporation of Calcutta. [2]

ation of
is of
cutta. 4. The Local Government may, by notification [3] published in the Calcutta Gazette, exclude from Calcutta any local area, or include therein any local area, in the vicinity of the same, and defined in the notification:

viso. Provided that, where the local area to be included is a Military Cantonment, or part of a Military Cantonment a notification shall not be pub-

[1] Ben. Act 2 of 1888 has been repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), and this reference should now be construed as a reference to s. 3 (7) of the latter Act, printed in the Bengal Code, 1912, Vol. III, p. 221, see the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 10, *post*, p. 146.

[2] For power to appoint persons to perform and exercise for places to which this Act is extended, the duties imposed and the powers conferred on “the Commissioners,” see s. 61 (1), *post*, p. 23.

[3] For references to notifications issued under section 4, see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VI.

(Secs. 5-7.)

lished under this section in respect of it without the previous sanction of the Governor General in Council.

CHAPTER II.

REGISTRATION OF HACKNEY-CARRIAGES.

5. (1) Every hackney-carriage in Calcutta^[1] shall be annually registered by Registering Officer, who shall be appointed^[2] for the purpose by the Commissioners^[3] and who shall keep a register in which he shall enter every hackney-carriage under either the first, the second or the third class.

Hackney-carriages to be registered annually.

(2) Every act, matter or thing done by the Registering Officer, under or by virtue of this Act, shall be subject to the control of the Chairman of the Commissioners.^[4]

Registering Officer to be under control of Chairman of Commissioners Appointment and removal of Registering Officer

(3) The appointment and removal of such Registering Officer shall be subject to the provisions of section 41 of the Calcutta Municipal Consolidation Act, 1888.^[5]

6. The year of registration shall commence on the first day of October of each year and shall terminate on the 30th day of September following.

Time and duration of registry.

7. (1) The owner of any carriage, who is desirous of registering it as a hackney-carriage, shall apply to the Registering Officer stating the class in which he desires that the carriage may be registered, and shall submit the carriage for the inspection of the Registering Officer.

Application for registry.

(2) The Registering Officer shall decide whether the carriage is fit to be registered in the class applied for and shall register it in that class or refuse to grant the application.

Application may be granted or refused.

[1] As to the substitution of the names of other places, see s. 61 (2), *post*, p. 23.

[2] For a list of orders made under section 5 (1) for Bihar and Orissa, see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VI.

[3] For power to appoint persons to perform and exercise, for places to which this Act is extended, the duties imposed and the powers conferred on "the Commissioners," see s. 61 (1), *post*, p. 23.

[4] For power to appoint persons to perform and exercise, for places to which this Act is extended, the duties imposed and the powers conferred on "the Chairman of the Commissioners," see s. 61 (1), *post*, p. 23.

[5] As to the suspension or dismissal of officers, see the Bengal General Clauses Act, 1899 (Ben Act 1 of 1899), s. 17, *post*, p. 147.

For the words "41 of the Calcutta Municipal Consolidation Act, 1888," read the words "46 of the Bengal Municipal Act, 1884"—see s. 61 (2), *post*, p. 23.

r" of
e. (3) The person in whose name any carriage is registered shall be deemed the owner of such carriage for the purposes of this Act.

to be
ed to 8. (1) The Registering Officer shall, at the time of registration, deliver a license duly signed by him to the owner of every hackney-carriage.

on of (2) Such license shall be in force for the year of registration.

ulars of
r and 9. The following particulars shall be entered in the register and shall be specified in the license to be given to the owner:—

(a) the class and the number assigned to the carriage in the register;

(b) the name and residence of the owner, the description of the carriage, and the place where such carriage is intended to be kept;

(c) the number and description of horses to be employed in drawing such carriage, and the place where such horses are intended to be kept;

(d) the number of persons the carriage is licensed to carry.

r
ation. 10. A fee of four rupees shall be paid for each registration of a carriage of the first class, a fee of three rupees for each registration of a carriage of the second class, and a fee of two rupees for each registration of a carriage of the third class.

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celled. 11. The Registering Officer may suspend for such period as he thinks fit or cancel the registration of any carriage and the license granted to the driver under this Act, whenever it shall appear to him that such carriage or any horse or harness used with such carriage is unfit for public use; due regard being had to the class in which such carriage is registered.

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e of
ship. 12. (1) Whenever any change shall take place in the ownership of a hackney-carriage, if the person to whom such carriage shall have been transferred shall desire to use it as a hackney-carriage, he shall before so using it give to the Registering Officer notice in writing of such transfer, and shall include in such notice the particulars specified in clauses (b) and (c) of section 9.

lty for
carriage
e giving
e. (2) If any such person shall, before giving such notice as aforesaid, use such carriage as a hackney-carriage, he shall be liable to a fine not exceeding five rupees for every day during which he shall so use the same.

to be
of 13. (1) Whenever the owner or driver of a registered hackney-carriage shall change his residence or the place where such carriage and horses

(Secs. 14-18.)

are kept, he shall, within one week from the date of such change, give to the Registering Officer a notice in writing which shall include the particulars specified in clauses (b) and (c) of section 9.

change of residence or place.

(2) Every such owner or driver who shall neglect to give such notice shall be liable for every such offence to a fine not exceeding ten rupees.

Penalty for neglect to give notice.

14. The Registering Officer, on receiving the notices specified in either of the two last preceding sections, shall make the necessary alteration in the register and in the license; and a fee of eight annas shall be chargeable in respect thereof.

Change of ownership or residence to be entered in register.

15. (1) Whoever keeps or is the proprietor of any hackney-carriage which has not been duly registered under this Act shall be liable to a fine not exceeding one hundred rupees.

Penalty for keeping unregistered carriage.

(2) Any police-officer or any person duly authorized by the Commissioners^[1] in that behalf and wearing a distinctive badge to indicate his official capacity may seize and remove to a police-station such carriage, together with the horse drawing the same.

Seizure of such carriage and horse.

(3) If the hackney-carriage or horse so seized be not claimed, and if any fine imposed be not paid, together with any costs or charges incurred within ten days of such seizure or imposition of such fine respectively, such carriage and the horse seized therewith may be sold by auction, and the proceeds applied to the payment of the fine and all costs and charges incurred on account of the detention and sale.

When such carriage or horse may be sold.

(4) The surplus, if any, if not claimed by the owner within a further period of twenty days, shall be credited to the Hackney-carriage Fund.

When surplus to be credited to Hackney-carriage Fund.

CHAPTER III.

PLATE ON HACKNEY-CARRIAGE.

16. Upon the registration of any hackney-carriage, the Registering Officer shall provide a plate bearing the class and the number of such carriage in the register and the number of persons it is licensed to carry, and shall cause such plate to be affixed on some conspicuous part of the outside of the carriage.

Plate to be affixed outside carriage.

17. If any hackney-carriage shall be let, used, or ply for hire without having a proper plate duly affixed as required by the last preceding section, the owner thereof shall be liable to a fine not exceeding fifty rupees.

Penalty for using carriage without plate.

18. Whenever the words or figures on any plate shall, during the term of the license, become indistinct or obliterated, and also when-

New plate may be had on loss or

[¹] For power to appoint persons to perform and exercise, for places to which this Act is extended, the duties imposed and the powers conferred on "the Commissioners," see s. 61 (2), *post*, p. 23.

ever any plate shall have been lost or stolen, the owner of the hackney-carriage on which such plate was affixed shall deliver such plate (if he shall have the same in his possession) to the Registering Officer, and shall be entitled to have a new plate affixed upon payment of one rupee:

Provided that if any plate which shall have been proved to have been lost or stolen shall afterwards be recovered, the same shall forthwith be delivered to the Registering Officer; and every person in or into whose possession any such plate as last aforesaid shall be or come and who shall refuse or neglect for three days to deliver the same to the said Registering Officer and also every registered owner who shall use or permit to be used any plate after the writing thereon shall have become indistinct or obliterated shall, for every such offence, be liable to a fine not exceeding ten rupees.

19. (1) On the expiration or other determination of the registration, the owner of every hackney-carriage shall cause the plate of such hackney-carriage to be delivered to the Registering Officer.

(2) Any person who, after the expiration of the period aforesaid, shall wilfully neglect for three days to deliver the plate to the said Officer, and every person who shall retain any plate affixed in respect of a registration which is no longer in force shall, for every such offence, be liable to a fine not exceeding fifty rupees.

20. (1) Every person who shall, for the purpose of deception, use or have any plate resembling or intended to resemble any plate affixed under this Act shall, for every such offence, be liable to a fine not exceeding two hundred rupees.

(2) It shall be lawful for any Police-officer, or any person employed for the purposes of this Act by the Registering Officer, to seize and take away any plate used or had as aforesaid wheresoever the same may be found, and to deliver the same to the Registering Officer.

CHAPTER IV.

DRIVER'S LICENSE.

21. (1) It shall be lawful for the Registering Officer to grant a license to act as driver of any hackney-carriage to any person who shall apply for the same, and to whom it may seem proper to the said Officer to grant it:

Provided that no person shall be so licensed who is under sixteen years of age.

(2) Every such license shall contain—

(a) the number of the license;

(Secs. 22-25.)

(b) the name, father's name, place of abode, and age of the person to whom such license is granted;

(c) the description of carriage and horses such person is licensed to drive;

(d) the date on which the license was granted,

and shall bear the signature of the Registering Officer.

(3) The license shall continue in force for one year from the date thereof unless the same shall be sooner revoked or suspended. Duration of license.

(4) For every such license there shall be paid a fee of two rupees. Fee for license.

22. If any person shall act as the driver of a hackney-carriage without having a license in force for the time being, or having a license shall transfer or lend the same or allow the same to be used by any other person, he shall be liable to a fine not exceeding twenty rupees, and in default of payment of fine to imprisonment for a period not exceeding fourteen days. Penalty for not having license or lending it out.

23. Any owner of a hackney-carriage who shall suffer any person not duly licensed under this Act to act as driver of any hackney-carriage of which he shall be the owner, shall be liable, for every such offence, to a fine not exceeding fifty rupees: Penalty for suffering unlicensed person to act as driver.

Provided that such owner and such unlicensed driver shall be subject to all the provisions of this Act, for any act done or omitted to be done by such driver during such employment in like manner as if such driver had been duly licensed. Proviso.

24. The particulars of every license which shall be granted under the provisions of this Act shall be entered in books to be kept for that purpose at the office of the Registering Officer; and every person applying shall, at reasonable times, be furnished with a certified copy of such particulars on payment of a fee of eight annas. Particulars of license to be registered and copy given on payment of fee.

CHAPTER V.

DRIVER'S TICKET.

25. (1) The Registering Officer shall, at the time of granting a license to any driver of a hackney-carriage, deliver a metal ticket marked or engraved with a number corresponding with the number of his license. Driver to wear metal ticket.

(Secs. 26-28.)

(2) Every driver to whom such ticket is delivered shall, at all times while acting as driver or while attending before any Magistrate, carry such ticket exposed to view.

(3) In case any such driver shall omit to wear such ticket exposed to view while acting as driver or attending before a Magistrate, he shall be liable to a fine not exceeding ten rupees, and in default of payment of fine to imprisonment for a period not exceeding one month.

26. Whenever the number on any ticket shall, during the term of the license, become indistinct or obliterated, and also whenever any ticket shall have been lost or stolen, the person to whom the license relating to any such ticket shall have been granted shall deliver such ticket (if he shall have the same in his possession), and shall produce such license to the Registering Officer, and such person shall then be entitled to have a new ticket delivered to him upon payment of eight annas :

Provided that if any ticket which shall have been proved to have been lost or stolen shall afterwards be recovered, the same shall forthwith be delivered to the Registering Officer; and every person in or into whose possession any such ticket as last aforesaid shall be or come who shall refuse or neglect for three days to deliver the same to the said Registering Officer, and also every person licensed under the authority of this Act who shall use or wear the ticket granted to him after the writing thereon shall have become indistinct or obliterated shall, for every such offence, be liable to a fine not exceeding ten rupees, and in default of payment of fine to imprisonment for a period not exceeding seven days.

27. (1) Upon the expiration or other determination of any license granted to a driver under this Act, such driver shall deliver such license and the ticket relating thereto to the Registering Officer.

(2) Every driver who shall neglect for three days to deliver such expired license, and ticket to the said Officer, and also every person who shall use, wear or detain any such expired license or ticket or other than such as shall have been delivered to him under the provisions of this Act, and every person to whom any ticket shall have been delivered as aforesaid who shall lend such ticket to any other person, and every person who shall wear or use the ticket of any other person shall, for every such offence, be liable to a fine not exceeding twenty rupees, and in default of payment of fine to imprisonment for a period not exceeding one month.

28. (1) Every person who shall for the purpose of deception use or wear any ticket resembling or intended to resemble any ticket granted under the authority of this Act, shall for every such offence, be liable to

(Secs. 29-30.)

a fine not exceeding one hundred rupees, and in default of payment of counterfeited fine to imprisonment for a period not exceeding one month. ticket.

(2) It shall be lawful for any police-officer or any person employed for the purposes of this Act by the Registering Officer to seize and take away any such expired or counterfeit ticket wheresoever the same may be found, and to deliver the same to the Registering Officer. Police may seize counterfeit ticket.

29. (1) Whenever any driver shall be summoned to appear before any Magistrate, to answer any charge preferred against him under this Act, he shall carry with him his license and produce the same if required so to do; and any driver who shall on such requisition fail to produce such license shall, for every such offence, be liable to a fine not exceeding five rupees, and in default of payment of fine to imprisonment for a period not exceeding seven days. Penalty for failing to produce license before Magistrate.

(2) It shall be lawful for any Magistrate, on conviction of any driver of any offence under this Act, to endorse on such license the nature of the offence, the date of the conviction and the amount of the penalty inflicted. Conviction of any charge to be endorsed on driver's license.

30. (1) It shall be lawful for any Magistrate before whom any driver shall be convicted of any offence, whether under this Act or under any other Act, to revoke the license of such driver or to suspend the same for such time as the Magistrate shall think proper, and for that purpose to require the driver or any other person in whose possession such license and the ticket thereto belonging shall then be, to deliver up the same. Revocation or suspension of driver's license on conviction.

(2) Every driver or other person who being so required shall refuse or neglect to deliver up such license and such ticket, shall be liable for every such offence to a fine not exceeding twenty rupees, and in default of payment of fine to imprisonment for a period not exceeding fourteen days. Penalty for refusal or neglect to deliver up license.

(3) The Magistrate shall forward every license and every ticket so delivered up to him to the Registering Officer, together with a memorandum of his sentence in the case. Magistrate to send surrendered license to Registering Officer.

(4) The Registering Officer shall enter the fact of such sentence in the register referred to in section 9, and shall either suspend or cancel such license according to the sentence of the Magistrate; and if it has been suspended, the Registering Officer shall, on application at the end of the time of suspension re-deliver such license or ticket to the person to whom it was granted. Cancellation or re-delivery.

CHAPTER VI.

FARES, HIRING, AND PLYING FOR HIRE.

Fares to be paid for hackney-carriages.

31. (1) The owner or driver of every hackney-carriage shall be entitled to demand and take for the hire of such carriage the fares specified in the first Schedule to this Act:

Proviso.

Provided that when the owner or driver of any hackney-carriage, to be paid a fare calculated according to the distance, shall be required by the hirer thereof to stop such carriage for any time or times amounting altogether to not less than fifteen minutes, it shall be lawful for the owner or driver to demand and receive from the hirer so requiring him to stop a further sum of one-fourth of the rate for the first hour, for every fifteen minutes that he shall have been so stopped.

Back fare not to be demanded.

(2) No owner or driver shall demand or receive over and above the said fare any sum for back fare for the return of the carriage from the place at which it was discharged:

Contract for lower fares to be binding.

Provided that any contract entered into to accept a fare lower than the fare so fixed shall be binding.

Owner to keep list of fares inside carriage.

32. (1) The owner of every registered hackney-carriage shall put up and at all times keep distinctly printed, painted or marked in the English, Urdu and Bengali languages,^[1] in such manner and in such position as shall be directed by the Registering Officer, on the inside of such carriage, the amount of fare according to distance and time which may legally be demanded and taken from the hirer of such carriage as a hackney-carriage.

Penalty for breach.

(2) Every such owner who shall fail to comply with the provision of this section shall, for each offence, be liable on conviction to a fine not exceeding ten rupees.

Distance driver bound to drive.

33. (1) The driver of every registered hackney-carriage shall (unless he has a reasonable excuse to be allowed by the Magistrate before whom the matter shall be brought in question) drive such carriage to any place to which he shall be required by the hirer thereof to drive the same, not exceeding six miles from the place where the same shall have been hired.

Speed when hired by time.

(2) When any such carriage shall have been hired by time, the driver thereof shall drive the same at a rate not less than four miles within one

[1] The words "or such other languages as the Local Government may, by notification in the Calcutta Gazette, prescribe," must be read in here—see s. 61 (2), *post*, p. 23.

For a list of orders made under s. 32 (1), as so amended, for Bihar and Orissa, see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VI.

(Secs. 34-36.)

hour; and if the driver of such carriage shall be required to drive more than four miles within one hour, then in every such case the driver thereof shall be entitled to demand, in addition to the fare regulated by time in the first Schedule to this Act for every mile or any part thereof exceeding four miles, the fare regulated by distance as set forth in that Schedule.

(3) Any such driver failing without reasonable excuse to comply with the provisions of this section shall be liable to a penalty not exceeding ten rupees, and in default of payment of fine to imprisonment for a period not exceeding seven days. Penalty for failure.

34. The driver of every registered hackney-carriage shall carry in or upon such carriage a quantity of luggage not exceeding two *maunds*, together with one additional *maund* for every person below four carried in the carriage without any additional charge. Quantity of luggage to be carried free of charge.

35. Any owner, person in charge of any registered hackney-carriage or driver who shall without sufficient reason refuse to let such carriage for hire, shall be liable for every such offence to a fine not exceeding fifty rupees, and to pay such further sum by way of compensation to the party complaining as to the Magistrate who shall hear the case may seem just; and such further sum shall, in default of immediate payment, be levied in the mode provided for the levying of fines under this Act. Penalty for refusing to let a carriage for hire.

36. Every driver of a hackney-carriage who shall—

- (a) be drunk during his employment;
- (b) make use of insulting or abusive language or gesture;
- (c) stand (elsewhere than at some stand or other place appointed for the purpose) or loiter for the purpose of being hired in or upon any public street, road, or place;
- (d) suffer his carriage to stand for hire across any street or alongside of any other carriage;
- (e) refuse to give way (when he reasonably and conveniently may do so) to any other carriage;
- (f) wilfully obstruct or hinder the driver of any other carriage in taking up or setting down any person into or from such other carriage;
- (g) wrongfully prevent or endeavour to prevent the driver of any other carriage from being hired;
- (h) demand or take more than the proper fare to which he is legally entitled;

Penalty on driver for certain offences.

(Secs. 37-39.)

- (i) refuse to admit and carry in his carriage the number of persons painted or marked on the registered plate affixed to such carriage or specified in the register;
- (j) carry more than such number of passengers;
- (k) refuse to carry by his carriage a reasonable quantity of luggage;
- (l) before he has been discharged by the hirer, (being hired by time) desert from the hiring;
- (m) ply for hire with any carriage or horse which shall be at the time unfit for public use,

shall be liable to a fine not exceeding ten rupees, and in default of payment of fine to imprisonment for a period not exceeding seven days.

Penalty on driver for refusing to attend at premises of owner.

37. Any driver employed as such by the owner of any registered hackney-carriage who shall, without sufficient excuse, refuse or neglect to attend at the premises of such owner for the purposes of driving any such carriage, whereby such owner is prevented from letting out the same, shall, on complaint by such owner, be liable for each offence to a fine not exceeding ten rupees, (which or any part of which may, by order of the Magistrate, be paid to the owner as compensation) and in default of payment of fine to imprisonment for a period not exceeding seven days.

Owner may be summoned to appear before Magistrate and to produce driver.

38. (1) When a complaint is made before a Magistrate against the driver of a registered hackney-carriage for any offence committed by him against the provisions of this Act, such Magistrate may forthwith summon the owner of the carriage personally to appear and to produce the driver of such carriage to answer the complaint.

Penalty for neglecting to appear or produce driver.

(2) If such owner, being duly summoned, shall, without a reasonable excuse, neglect or refuse personally to appear or to produce the driver according to such summons, he shall be liable to a fine not exceeding fifty rupees, and so from time to time as often as he shall be so summoned, until such driver shall be produced by him:

Magistrate to hear and determine complaint on failure to appear.

Provided that if such owner shall, without a reasonable excuse, neglect or refuse to appear and produce such driver on the second or any subsequent summons requiring him so to do, it shall be lawful for the Magistrate to proceed to hear and determine the complaint in the absence of the owner and driver, or either of them.

Procedure on refusal to pay fares.

39. (1) If any person, who shall have hired a registered hackney-carriage shall refuse to pay to the owner or driver thereof on demand the fare payable under this Act, it shall be lawful for the Magistrate to order payment of such fare and also of such compensation for loss of time

(Secs. 40-44.)

as shall seem reasonable and in default of payment such fare and compensation may be recovered in the same way as a fine.

(2) If any person who shall have used any such carriage shall attempt to evade payment of the fare or any portion of the same which he may be deemed liable to pay, he shall be liable to a fine not exceeding fifty rupees, or to imprisonment for a period not exceeding one month, in addition to the payment of such fare and compensation as hereinbefore mentioned. Penalty for fraudulent evasion.

40. (1) Any person who shall maliciously or knowingly tear, destroy, deface, obliterate or remove any carriage-plate, table of fares or driver's ticket which shall have been granted under the provisions of this Act, shall be liable for every such offence to a fine not exceeding twenty rupees, and in default of payment of fine to imprisonment for a period not exceeding fourteen days. Penalty for destroying carriage-plate, etc.

(2) Any portion of the fine may be awarded to the person to whom such carriage-plate, table of fares or driver's ticket shall belong. Award of fine to owner of carriage-plate, etc.

41. Any person using a registered hackney-carriage who shall wilfully injure the same shall be liable to a fine not exceeding twenty rupees, and in default of payment of fine to imprisonment for a period not exceeding fourteen days; and shall also pay to the owner of the carriage such compensation for the injury as the Magistrate may direct. Penalty for wilful injury to carriage.

42. In case of any dispute between the hirer and driver of any registered hackney-carriage, the hirer may, if any Magistrate be then sitting, require the driver to drive to the Court of such Magistrate, or, if no Magistrate be then sitting, to the Registering Officer; and if any driver shall refuse to obey such requisition, it shall be lawful for the hirer to give such driver into the custody of the nearest police-officer; such police-officer shall thereupon take the driver and the hirer together with the carriage and horse to such Court or Registering Officer and the then sitting Magistrate or Registering Officer shall in either of the cases aforesaid hear and determine the dispute in a summary way. Disputes how to be settled.

43. In the case of disputes as to the fare to be calculated according to the distance, any table or book signed by the Registering Officer shall, on proof of such signature, be taken to be conclusive evidence of the distances therein stated. Table of distances signed by Registering Officer conclusive.

44. (1) It shall be lawful for any registered hackney-carriage to ply for hire as a stage-carriage. Hackney-carriage may ply for hire as stage-carriage.

(2) The owner or driver of a carriage so plying for hire or hired as a stage-carriage, shall not be subject to the provisions of section 31 of this Act, but shall be entitled to demand and take for the hire of such carriage Fares for stage-carnages

how to be determined.

Hackney-carriages plying as stage-carriages subject to provisions of Act.

Stands to be appointed.

Stands to have boards affixed in front of them.

such fares as shall be agreed upon between him and the several hirers respectively.

(3) All the other provisions of this Act shall be applicable to the case of a hackney-carriage plying as a stage-carriage, so far as the same shall be applicable in each particular instance.

45. (1) The Registering Officer shall from time to time appoint one or more stands in Calcutta^[1] for hackney-carriages registered under this Act, and may also assign for the use of such carriages, as public stands, any coach-houses, stables or sheds, or other suitable places.

(2) Every public stand so appointed or assigned shall have a board affixed in a conspicuous place in front thereof, containing a notice in the English, Urdu and Bengali languages^[2] that the stand is a public stand under this Act.

CHAPTER VII.

PALANQUINS.

Palanquins to be registered annually.

46. (1) Every *palanquin* plying for hire in Calcutta^[1] shall be annually registered by the Officer appointed for registering hackney-carriages at the time and in the manner hereinbefore provided with respect to the registration of hackney-carriages.

Fee for registration.

Refusal to register palanquins.

Particulars of register.

(2) Upon each registration a fee of eight annas shall be paid:

Provided that the Registering Officer may refuse to register any *palanquin* or may cancel the registration thereof whenever it may appear to him to be unserviceable or unfit for public use.

47. (1) The following particulars shall be entered in the register, namely:—

- (a) the number of the *palanquin*;
- (b) the name and residence of the owner.

Change of ownership or residence to be notified.

(2) Every change of ownership or residence shall be notified to the Registering Officer, subject to the same provisions and penalties in default as are provided in the case of the owners of hackney-carriages.

^[1] As to the substitution of the names of other places, see s. 61 (2), *post*, p. 23.

^[2] The words "or such other languages as the Local Government may, by notification in the Calcutta Gazette, prescribe" must be read in here—see s. 61 (2), *post*, p. 23.

For a list of orders made under section 45 (2), as so amended for Bihar and Orissa see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VI.

(Secs. 48-51.)

48. (1) The owner of every registered *palanquin* shall cause the registered number thereof to be painted in the English and Bengali figures on a conspicuous part thereof. Registered number to be painted on *palanquin*.

(2) The owner of any *palanquin* plying for hire without being registered or having the number affixed thereto as aforesaid, shall be liable to a fine not exceeding ten rupees. Penalty for neglecting to register *palanquins*.

(3) The person in whose name a *palanquin* is for the time being registered shall be deemed the owner thereof for the purposes of this Act. "Owner" of *palanquins*

49. The owner of every *palanquin* shall put up and at all times keep distinctly printed, painted or marked in the English, Urdu and Bengali languages,[¹] in such manner and in such position as shall be directed by the Registering Officer, on the inside of such *palanquin* the amount of fare according to distance and time which may be legally demanded and taken from the hirer of such *palanquin*. Owner to keep list of fares inside *palanquin*.

50. (1) The owner or person in charge of every *palanquin* shall be entitled to demand and take for the hire of such *palanquin* the fare specified in the second Schedule to this Act: Fares to be paid for *palanquin*.

Provided that when the owner or person in charge of any *palanquin* to be paid a fare calculated according to the distance shall be required by the hirer to stop such *palanquin* for fifteen minutes, or for any longer time, it shall be lawful for the owner or person in charge to demand and receive from the hirer so requiring him to stop, a further sum of one-fourth of the rate for the first hour, for every fifteen minutes that he shall have been so stopped. Proviso.

(2) No owner or person in charge of a *palanquin* shall demand or receive over and above the said fare any sum for back hire for the return of the *palanquin* from the place at which it was discharged: Back fare not to be demanded.

Provided that any contract entered into to accept a fare lower than the fare so fixed shall be binding. Contract for lower fares to be binding.

51. (1) It shall not be lawful for any person to act as the bearer of a registered *palanquin*, unless such person shall have obtained a license from the Registering Officer in the manner hereinbefore prescribed for drivers of hackney-carriages. Bearers of *palanquins* to have licenses.

(2) All the provisions of this Act in any way relating to the taking out, granting, renewing, producing or using the licenses, or to the issuing, granting, wearing or using tickets granted to drivers of hackney-carriages, shall be applicable in like manner to the bearers of *palanquin*. Provisions relating to hackney-carriages applicable to *palanquins*.

[¹] The words "or such other languages as the Local Government may, by notification in the Calcutta Gazette, prescribe" must be read in here—see s. 61 (2), *post*, p. 23.

For a list of orders made under section 49, as so amended, for Bihar and Orissa, see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VI.

(Secs. 52-53.)

Fee for
license.

(3) For every license to act as a *palanquin* bearer granted under this Act there shall be paid a fee of eight annas.

Distance
bearers
bound to
carry
palanquins.

52. (1) The bearers of every *palanquin* registered under this Act shall (unless they have a reasonable excuse to be allowed by the Magistrate before whom the matter shall be brought in question) carry such *palanquin* to any place to which they shall be required by the hirer thereof to carry the same, not exceeding five miles from the place where the same shall have been hired.

Speed when
hired by
time.

(2) If such *palanquin* shall have been hired by time, the bearers thereof may be required to carry it at any rate not exceeding two and-a-half miles within one hour.

Fare by
distance may
be demanded
in addition
to fare by
time.

(3) Whenever the bearers of such *palanquin* shall be required to carry it more than two and-a-half miles within one hour, they shall be entitled to demand, in addition to the fare regulated by time in the second Schedule to this Act, for every mile or any part thereof exceeding two and-a-half miles, the fare regulated by distance as set forth in the said Schedule.

Provisions
regarding
owners and
drivers of
hackney-
carriages
applicable to
owners and
bearers of
palanquins.

(4) All and every of the provisions of this Act as to offences committed by or against the owners and drivers of hackney-carriages and the penalties in respect of the same and recovery thereof, and all the remedies by or against hirers, owners or drivers of hackney-carriages, and all and several of the remedies given to hirers, owners and drivers of hackney-carriages, except the provisions contained in section 38, shall be applicable, so far as the same may reasonably be applied, to the owners and bearers of *palanquins*.

CHAPTER VIII.

BY-LAWS.

Commission-
ers in
meeting
may make
by-laws.

53. (1) The Commissioners^[1] in meeting may from time to time make by-laws^[2] not inconsistent with the provisions of this Act, with regard to—

- (a) the examination and qualification of drivers, and the conditions under which they may be employed;
- (b) the description of horses, harness, and other things to be used in hackney-carriages, the dimensions of such carriages, and

^[1] For power to appoint persons to perform and exercise, for places to which this Act is extended, the duties imposed and the powers conferred on "the Commissioners," see s. 61 (1), *post*, p. 23.

^[2] For a list of by-laws, made under section 53, for Bihar and Orissa, see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VI.

(Secs. 54-55.)

the condition in which such carriages, and the horses, harness and other things used therewith shall be kept;

(c) the inspection of the premises on which any such carriages, horses, harness and other things are kept;

(d) the protection of weak, lame and sickly horses;

(e) the publication of a table of distances; and

generally, for carrying out the purposes of this Act.

(2) The Commissioners^[1] in meeting may from time to time repeal, alter or add to any by-law made under this section.

By-laws may be repealed or altered.

(3) No by-law, and no repeal or alteration of, or addition to, any by-law, shall have effect until the same has been confirmed by the Local Government.

By-laws when to take effect

(4) Every by-law, and every repeal or alteration of, or addition to, any by-law when confirmed; shall be published in the Calcutta Gazette.

By-laws to be published in Gazette.

54. Whoever infringes any by-law made and confirmed shall be liable to a fine not exceeding twenty rupees.

Penalty for infringement of by-laws

CHAPTER IX.

PROSECUTIONS.

55. (1) Every prosecution under this Act may be instituted before any Magistrate having jurisdiction who may summon the persons charged to appear at a time and place to be mentioned in the summons; and if such person do not appear, the Magistrate may, upon proof of service of the summons if no sufficient cause shall be shown for the non-appearance of the person charged, proceed to hear and determine the case in his absence.

Prosecutions to be instituted before Magistrate.

(2) If such person do appear, then the procedure laid down in the Code of Criminal Procedure of 1882,^[2] from section 242 to section 248 shall be followed.

Procedure in case of prosecution.

[1] For power to appoint persons to perform and exercise, for places to which this Act is extended, the duties imposed and the powers conferred on "the Commissioners," see s. 61 (1), *post*, p. 23.

[2] Act 10 of 1882 has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and this reference should now be taken to be made to sections 242 to 248 of that Code—see s. 3 (1) thereof, in the General Acts, 1898-1903, Ed. 1909, p. 40.

(Secs. 56-59.)

Fines how to be levied.

(3) All fines imposed by a Magistrate under this Act shall be levied under the provisions of sections 386, 387, 388 and 389 of the said Code^[1].

Liability to fine when incurred.

56. (1) No person shall be liable to any fine under this Act for any offence cognizable by a Magistrate, unless the complaint respecting such offence shall have been made within three months next after the commission of such offence.

(2) The omission to register any hackney-carriage or *palanquin* or to take out a license shall be deemed to be a continuing offence.

Damage to property of Commissioners to be paid for.

57. (1) If through any act, neglect or default on account whereof any person shall have been fined under this Act, any damage to the property of the Commissioners^[2] shall have been committed by such person, he shall be liable to make good such damage as well as to pay such fine.

Amount of damage to be determined by Magistrate

(2) The amount of such damage shall be determined by the Magistrate by whom such person has been fined, and in default of payment of the amount of such damage on demand, the same may be levied in the same manner as a fine.

Compensation for groundless prosecution.

58. In any case in which a Magistrate is satisfied that a complainant had no reasonable ground for instituting a prosecution, it shall be lawful for such Magistrate to direct the complainant to pay to the accused such compensation not exceeding fifty rupees as he thinks fit; and the sum so awarded shall be recoverable as if it were a fine.

CHAPTER X.

MISCELLANEOUS.

Property left in carriage or *palanquin* to be deposited in police-station.

59. (1) The driver of every hackney-carriage and the bearers of every *palanquin* within the limits of this Act, wherein any property shall be left by any person shall, within twenty-four hours, carry such property, if not sooner claimed by the owner thereof, to the nearest police-station, and shall there deposit it with the Inspector or other officer on duty, and demand a receipt for it duly signed by the officer taking charge of the same.

Penalty for neglecting to do so.

(2) Any such driver or bearer making default herein shall be liable to a fine not exceeding fifty rupees, and in default of payment of fine to imprisonment for a period not exceeding one month.

[¹] This reference should now be taken to be made to ss. 386 to 389 of the Code of Criminal Procedure, 1898—see s. 3 (1), thereof, in the General Acts, 1898-1903, Ed. 1909, p. 40.

[²] For power to appoint persons to perform and exercise, for places to which this Act is extended, the duties imposed and the powers conferred on "the Commissioners," see s. 61 (1), *post*, p. 23.

(Secs. 60-61.)

(3) The said officer shall forthwith enter in a book to be kept for that purpose—

- (a) the description of such property;
- (b) the name and address of the driver or bearer who shall bring such property;
- (c) the day and hour on which it shall be brought;
- (d) the name and address of the owner of the hackney-carriage or *palanquin* in which the property shall have been left and the registered number of such carriage or *palanquin*, and shall give the person a receipt for the same.

Police-officer to enter particulars in book, and grant receipt.

(4) The property so entered shall be returned to the person who shall prove to the satisfaction of the Commissioner of Police that the same belonged to him; such person previously paying all expenses incurred, together with such reasonable sum to the driver or bearers who brought the same as the said Commissioner shall award:

Property to be returned to owner.

Provided always that if such property shall not be claimed by, and proved to belong to, some one within one year after the same shall have been deposited, the said Commissioner shall cause such property to be sold, or otherwise disposed of; and the proceeds, after deducting the expenses, together with a reasonable sum to the driver or bearers, shall be applied in the same manner as fees and penalties received under this Act.

When such property may be sold and how proceeds may be applied.

60. All fees and fines levied under this Act shall be credited in the first instance to a fund to be called the "Hackney-carriage Fund," which shall be employed in carrying out the purposes of this Act,

Fees and fines how to be dealt with.

and in the event of one or more municipalities being included in Calcutta by virtue of a notification published under section 4, then such fund shall yearly be divided between the Calcutta Municipality and such other municipality or municipalities in such proportion as the Local Government may determine, each municipality employing the sum so appropriated to it to carrying out the purposes of this Act.

61. (1) Whenever this Act shall be extended to any other town or place under section 1, the Local Government may appoint^[1] persons, either by name or by official designation, to perform the duties imposed, and exercise the powers conferred, by this Act on the Commissioners and the Chairman of the Commissioners.

Appointment of officers when Act extended beyond Calcutta.

(2) And in each town or place to which this Act may be extended, for the word "Calcutta" in sections 5, 45 and 46 shall be read the name of such town or place, and after the word "languages" in sec-

Modifications in Act when extended beyond Calcutta

[1] For lists of orders issued under section 61 (1) for Bihar and Orissa, see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VI.

tions 32, sub-section (1), 45, sub-section (2) and 49 shall be read "or such other languages as the Local Government may by notification in the Calcutta Gazette prescribe," and for the words "41 of the Calcutta Municipal Consolidation Act, 1888," in section 5, sub-section (3), shall be read the words "46 of the Bengal Municipal Act, 1884."

Ben. Act 2 of 1888.
 Ben. Act 3 of 1884.

FIRST SCHEDULE.

(Referred to in section 31).

RATES AND FARES TO BE PAID FOR HACKNEY-CARRIAGES.

FARE BY DISTANCE.				FARE BY TIME.			
Description of carriage.	For any distance within and not exceeding one mile.	For any distance exceeding one mile.	For any time within and not exceeding one hour.	For every hour or part of an hour beyond one hour.	For half a day or five hours.	For a whole day consisting of nine hours.	For every hour or part of an hour after the ninth hour.
First class .	8 annas	At the rate of 6 annas for every mile and for any part of a mile over and above any number of miles completed.	1 rupee.	8 annas.	..	5 rupees.	8 annas.
Second ..	6 annas.	At the rate of 4 annas for every mile and for any part of a mile over and above any number of miles completed.	12 annas.	6 annas.	2 rupees.	3 rupees and 8 annas.	6 annas.
Third ..	3 annas	At the rate of 2 annas for every mile and for any part of a mile over and above any number of miles completed.	6 annas.	For the second hour and for the third hour or for any part of either.	..	2 rupees.	3 annas.
				For every hour or part of an hour beyond the third hour.			
				4 annas.			
				3 annas.			

The above fares to be paid according to time, unless at the commencement of the hiring the hirer expresses his intention of paying according to distance. In the case of a second class carriage, the hirer cannot avail himself of the half day, or whole day, rate unless at the time of hiring he engages the carriage for the half day or whole day, as the case may be.

(Second Schedule.)

SECOND SCHEDULE.

(Referred to in section 50).

RATES AND FARES TO BE PAID FOR PALANQUINS.

FARE BY DISTANCE.		FARE BY TIME.			
For any distance within and not exceeding one mile.	For any distance exceeding one mile	For any time within and not exceeding one hour.	For every hour or part of an hour beyond one hour.	For half a day or five hours.	For a whole day consisting of nine hours.
3 annas.	At the rate of 3 annas for every mile and for any part of a mile over and above any number of miles completed.	6 annas.	3 annas.	1 rupee.	1 rupee and 8 annas.

The above fares to be paid according to distance or time, at the option of the hirer, to be expressed at the commencement of the hiring. If not otherwise expressed, the fare to be paid according to time.

APPENDIX.

List of places in Bihar and Orissa to which the Calcutta Hackney-carriage Act, 1891 (Ben. Act 2 of 1891), has been extended under section 1 thereof or in which the said Act is in force by virtue of s. 2 (2) thereof.

1	2
District.	Places.
Champanan	Bettiah Municipality.
Cuttack	{ Cantonment of Cuttack. Cuttack Municipality.
Gaya	Gaya Municipality.
Monghyr	Monghyr Municipality.
Muzaffarpur	Muzaffarpur Municipality.
Patna	{ Dinapur Cantonment and Khagool town within specified areas. Patna Municipality.
Saran	Chapra Municipality.
Shahabad	{ Arrah Municipality Buxar Municipality. Sasaram Municipality.

BENGAL ACT 1 OF 1892.

[THE BENGAL VILLAGE CHAUKIDARI (AMENDMENT) ACT, 1892.]

CONTENTS.

PREAMBLE.

SECTION.

1. Construction and extent.
2. (1) (*Repealed.*)
(2) and (3) " District Magistrate " substituted for " Magistrate of the District "
and " Magistrate. "
3. New section substituted for section 3.
4. New section inserted after section 3.
5. New section substituted for section 4.
6. (*Repealed.*)
7. New section substituted for section 11.
8. New section substituted for section 12.
9. New section substituted for section 13.
10. New section substituted for section 14.
11. New section substituted for section 35.
12. (*Repealed.*)
13. New section substituted for section 39.
14. New section substituted for section 42
15. Amendment of section 43.
16. Amendment of section 44.
17. New section substituted for section 46A.
18. New section substituted for section 62.
19. New Schedule substituted for Schedule B.

BENGAL ACT 1 OF 1892.

[THE BENGAL VILLAGE CHAUKIDARI (AMENDMENT) ACT, 1892.][¹]

(19th October, 1892.)

An Act to further amend the Village Chaukidari Act, 1870.^[2]

Ben. Act 6 of 1870.

Whereas it is expedient to further amend the Village Chaukidari Act, Preamble. 1870;^[2]

It is enacted as follows:—

1. This Act shall be read with, and taken as part of, Bengal Act 6 of Construction and extent. 1870,^[2] as amended by Bengal Act 1 of 1871^[3] and Bengal Act 1 of 1886;^[3] and it shall extend to all districts in which the said Act so amended is now or may be hereafter in force.

2. (1) (*Repeal of definition of "Magistrate" in Ben. Act 6 of 1870, "District Magistrate," substituted for "Magistrate of the District" in Ben. Act 1 of 1871, and "Magistrate of the District" in Ben. Act 1 of 1886.*)^[3] s. 1). *Rep. by the Amending Act, 1903 (1 of 1903).*

(2) Except as is otherwise provided in this Act, for the words "Magistrate of the District" and for the word "Magistrate," so often as they occur respectively, in the Village Chaukidari Act, 1870,^[2] as amended by Bengal Act 1 of 1871^[3] and Bengal Act 1 of 1886,^[3] the words "District Magistrate" shall be substituted.

(3) In section 64, the words "and Magistrates" shall be omitted; and for the words "Magistrates of Districts" the words "District Magistrates" shall be substituted.

3. For section 3 * * * [⁴] the following shall be substituted:— New section substituted for section 3.

3. [Printed in Vol. II of this Code.]

[¹] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. II—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1892, Pt. IV, p. 24; and for Proceedings in Council, page 24; and for Proceedings and 1710.

LOCAL CHAUKIDARI Act is in force—see s. 1. taken as part of, the Village to all districts in which that

The application of the Act is barred in—

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I, p. 864; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 177.

[²] Ben. Act 6 of 1870 is printed in Vol. II of this Code.

[³] Printed in Vol. II of this Code.

[⁴] The words and figures "as amended by section 2 of Bengal Act 1 of 1886," were repealed by the Repealing and Amending Act, 1897 (5 of 1897), and are omitted

(Secs. 4-19.)

New section
inserted
after
section 3.
New section
substituted
for section 4.

4. After section 3 the following section shall be inserted:—

3A. [Printed in Vol. II of this Code.]

5. For section 4 the following shall be substituted:—

4. [Printed in Vol. II of this Code.]

6. (*Partial repeal of section 5.*) *Rep. by the Amending Act, 1903*
(1 of 1903).

7. For section 11 the following shall be substituted:—

11. [Printed in Vol. II of this Code.]

8. For section 12 the following shall be substituted:—

12. [Printed in Vol. II of this Code.]

9. For section 13 the following shall be substituted:—

13. [Printed in Vol. II of this Code.]

10. For section 14 the following shall be substituted:—

14. [Printed in Vol. II of this Code.]

11. For section 35 the following shall be substituted:—

35. [Printed in Vol. II of this Code.]

12. (*Repeal of sections 36 and 37.*) *Rep. by the Amending Act,*
1903 (1 of 1903).

13. For section 39 the following shall be substituted:—

39. [Printed in Vol. II of this Code.]

14. For section 42 the following shall be substituted:—

42. [Printed in Vol. II of this Code.]

15. In section 43, for the words "or person as the Magistrate shall appoint," the words "as the Local Government may by rules made under this Act prescribe or direct," shall be substituted.

16. In section 44, for the words "as the Magistrate may appoint," the words "as the Local Government may prescribe or direct," shall be substituted:—

17. For section 46A the following shall be substituted:—

46A. [Printed in Vol. II of this Code.]

18. For section 62 the following shall be substituted:—

62. [Printed in Vol. II of this Code.]

19. For Schedule B the following shall be substituted:—

Sch. B. [Printed in Vol. II of this Code.]

New section
substituted
for section
11.

New section
substituted
for section
12.

New section
substituted
for section
13.

New section
substituted
for section
14.

New section
substituted
for section
35.

New section
substituted
for section
39.

New section
substituted
for section 42.

Amendment
of section
43.

Amendment
of section

.. section
substituted
for section
46A.

New section
substituted
for section
62.

New Schedule
substituted
for
Schedule B.

BENGAL ACT 4 OF 1894.

[THE BENGAL MUNICIPAL (AMENDMENT) ACT, 1891]

CONTENTS.

SECTION.

1. Construction.
(Commencement.) *Repealed.*
2. Amendment of section 2.
3. New definition added to section 6.
4. New sections substituted for section 9.
5. (*Repealed.*)
6. Amendment of section 14.
7. Addition to section 15.
8. Amendment of section 17.
9. (*Repealed.*)
10. New section substituted for section 20.
11. New section substituted for section 22.
12. New section substituted for section 23.
13. Amendment of section 24.
14. New section inserted after section 25.
15. Amendment of section 26.
16. New section inserted after section 26.
17. New section inserted after section 26A.
18. Amendment of section 27.
19. New section inserted after section 27.
20. Addition to section 28.
21. New section inserted after section 29.
22. Amendment of section 30.
23. New sections inserted after section 37.
24. Addition to section 38.
25. Amendment of section 46.
26. Amendment of section 57.
27. New section substituted for section 58.
28. Amendment of section 59.
29. New section inserted after section 66.
30. Amendment of section 68.
31. (*Repealed.*)
32. Amendment of section 76.
33. New section substituted for section 82.
34. Amendment of section 85.
35. Amendment of section 86.

Of the Tax on Persons.

36. Amendment of section 87.
37. Amendment of section 89.

Of the Rate on Holdings.

38. Amendment of section 97.
39. New section inserted after section 97.
40. Addition to section 98.
41. Amendment of section 99.
42. Amendment of section 101.
43. New section inserted before section 112.
44. Addition to section 113.
45. Amendment of section 114.
46. (*Repealed.*)

32 *The Bengal Municipal (Amendment) Act, 1894.* [Ben. Act 4 of 1894.]

SECTION.

47. Amendment of section 121.
48. Addition to section 125.
49. Amendment of section 127.
50. New section inserted after section 141.
51. (*Repealed.*)
52. New section inserted after section 147.
53. Amendment of section 186.
54. Amendment of section 187.
55. Amendment of section 199.
56. New section inserted after section 199.
57. New section substituted for section 200.
58. New section substituted for section 208.
59. New section substituted for section 210.
60. New section inserted after section 210.
61. Amendment of section 212.
62. Amendment of section 217.
63. Amendment of section 218.
64. Amendment of section 219.
65. Addition of proviso to section 220.
66. New section inserted after section 223.
67. Amendment of section 236.
68. New section substituted for sections 237 to 241.
69. New section substituted for section 242.
70. New section inserted after section 242.
71. Amendment of section 243.
72. New sections inserted after section 256.
73. New section inserted after section 260.
74. Amendment of section 261.
75. Addition of proviso to section 262.
76. New section inserted after section 262.
77. (*Repealed.*)
78. Amendment of section 270.
79. Amendment of section 271.
80. Amendment of section 273.
81. New section substituted for section 279.
82. New section substituted for section 290.
83. (*Repealed.*)
84. Amendment of section 307.
85. New section inserted after section 318.

The Cleansing of Private Privies and Cesspools.

86. Amendment of section 320.
87. Amendment of section 321.
88. New section substituted for section 322.
89. (*Repealed.*)
90. New section inserted after section 334.
91. Amendment of section 339.
92. New sections inserted after section 349.
93. Amendment of section 350.
94. New section inserted after section 350.
95. Amendment of section 351.
96. New section inserted after section 351.
97. Amendment of section 353.
98. Addition to section 365.
99. Addition to Schedule V.

BENGAL ACT 4 OF 1894.

[THE BENGAL MUNICIPAL (AMENDMENT) ACT 1894.][¹]

(15th August, 1894.)

An Act to amend the Bengal Municipal Act, 1884.[²]

Whereas it is expedient to amend Bengal Act 3 of 1884;[³]

It is hereby enacted as follows:—

1. This Act shall be read with, and taken as part of, Bengal Act 3 of 1884[⁴]; and

(Commencement.) *Rep. by the Amending Act, 1903 (1 of 1903).*

2. (1) In section 2, after the words “commenced under this Act” the following shall be added, namely:—

[Printed in Vol. II of this Code.]

(2) In the same section, for the fourth paragraph the following shall be substituted:—

[Printed in Vol. II of this Code.]

3. In section 6, after the definition contained in clause (14), the following definition shall be inserted:—

14A. [Printed in Vol. II of this Code.]

4. For section 9 the following sections shall be substituted:—

9, 9A, 9B. [Printed in Vol. II of this Code.]

5. (Repeal of sections 11 and 12.) *Rep. by the Amending Act, 1903 (1 of 1903).*

6. In section 14, in the second paragraph, after the word “appointed” the words “either by name or by official designation” shall be added.

[¹] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1892, Pt. IV, p. 20; for Reports of the Select Committee, see *ibid.*, p. 27 and *ibid.*, 1894, Pt. IV, p. 13; and for Proceedings in Council, see *ibid.*, 1892, Supplement, pp. 1154, 1252 and 1719; *ibid.*, 1893, Supplement, pp. 81, 1430 and 2225, *ibid.*, 1894, Supplement, pp. 235, 479, 647, 686, 776 and 840.

LOCAL EXTENT.—The local extent of Ben. Act 4 of 1894 is the same as that of Ben. Act 3 of 1894, printed in Vol. II of this Code.

As the Bengal Municipal Act, 1884 applies to the Southern Division, this Act must be taken to apply to the Southern Division.

[²] Printed in Vol. II of this Code.

Addition to
section 15.

7. (1) In section 15, after the word "election," at the end of the first sentence, the words "and the authority who shall decide disputes thereunder" shall be inserted * * *

(2) At the end of the same section the following shall be added, namely:—

[Printed in Vol. II of this Code.]

Amendment
of section
17.

8. In section 17, in the first paragraph, after the words "by the Local Government" the words "either by name or by official designation" shall be added.

9. (*Repeal of section 18.*) *Rep. by the Amending Act, 1903 (1 of 1903).*

New section
substituted
for section
20.

10. For section 20 the following shall be substituted, namely:—
20. [Printed in Vol. II of this Code.]

New section
substituted
for section
22.

11. For section 22 the following shall be substituted:—
22. [Printed in Vol. II of this Code.]

New section
substituted
for section 23.

12. For section 23 the following shall be substituted:—
23. [Printed in Vol. II of this Code.]

Amendment
of section
24.

13. In section 24, in the second paragraph, before the word "Every" the words "Except as is otherwise provided in this Act" shall be inserted.

New section
inserted
after section
25.

14. After section 25 the following section shall be inserted:—
25A. [Printed in Vol. II of this Code.]

Amendment
of section
26.

15. In section 26, for the words "next subsequent appointment or election, not being an appointment or election under the next succeeding section," the words "first meeting of the body of Commissioners newly appointed and elected, at which a quorum shall be present, and any Chairman elected under section twenty-three or twenty-seven shall be competent to discharge the duties of his office after his election and pending the orders of the Local Government approving of his election" shall be substituted.

New section
inserted
after section
26.

16. After section 26 the following section shall be inserted:—
26A. [Printed in Vol. II of this Code.]

New section
inserted
after section
26 A.

17. After section 26A the following section shall be inserted:—
26B. [Printed in Vol. II of this Code.]

Amendment
of section
27.

18. In section 27, after the words "term of office" the words and letter "or shall avail himself of leave granted under section twenty-six

[¹] Portion of s. 7 (1), which was repealed by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 19, is omitted.

(Secs. 19-30.)

B" shall be inserted, and after the word "death" the words "or absence on leave" shall be inserted; also at the end of section the words "or during his absence on leave, as the case may be" shall be added.

19. After section 27 the following section shall be inserted:—

27A. [Printed in Vol. II of this Code.]

New section inserted after section 27.

20. In section 28, at the end thereof, the following shall be added:—

[Printed in Vol. II of this Code.]

Addition to section 28.

21. After section 29 the following section shall be inserted:—

29A. [Printed in Vol. II of this Code.]

New section inserted after section 29.

22. In section 30, in the first line after the word "roads" the words "including the soil and all" shall be inserted, and in the second and third paragraphs of the same section, after the words "from the operation of this Act" the words "or of any specified section of this Act" shall be inserted.

Amendment of section 30

23. After section 37 the following sections shall be inserted:—

37A to 37M. [Printed in Vol. II of this Code.]

New sections inserted after section 37.

24. To section 38 the following paragraph shall be added:—

[Printed in Vol. II of this Code.]

Addition to section 38.

25. In section 46, after the word "Engineer" the word "or" shall be omitted, and after the words "Health Officer" the words "or Assessor" shall be inserted.

Amendment of section 46.

26. In section 57, in the first paragraph, the words "by himself or through others" shall be omitted, and for the words "made with the Commissioners" the words "of any kind whatsoever to which the Commissioners are a party or shall hold any office of profit under them" shall be substituted; after the words "such share or interest" the words "or shall hold such office," shall be inserted, and after the word "rupees" the words "Provided that" shall be inserted.

Amendment of section 57.

27. For section 58 the following shall be substituted:—

58. [Printed in Vol. II of this Code.]

New section substituted for section 58.

28. In section 59, in clause (a), after the words "section twenty-three" the words "or twenty-seven" shall be inserted.

Amendment of section 59.

29. After section 66 the following section shall be inserted:—

66A. [Printed in Vol. II of this Code.]

New section inserted after section 66.

30. (1) In section 68, in the first line, before the words "The Commissioners" the words "Except as is otherwise provided in this Act" shall be inserted.

Amendment of section 68

(2) In clause (c) of the same section, the word “and” shall be omitted, and after the word “treasury” the words “and towards the salary of any special officer, who may be appointed under section eighty-two” shall be inserted.

(3) In the proviso to clause (c) of the same section, after the word and letter “clause (c)” the words “otherwise than as the salary of a special officer under section eighty-two” shall be inserted.

31. (*Amendment of section 69.*) Rep. by the *Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896).*

32. In section 76, the words “or sanction it after making such alterations therein as may seem to him fit” shall be omitted, and after the word “Division” and before the word “Provided” the following shall be inserted:—

[Printed in Vol. II of this Code.]

33. For section 82 the following shall be substituted:—

82. [Printed in Vol. II of this Code.]

34. In section 85, for the words “but not” the word “or” shall be substituted, in clause (b) the word “all” shall be omitted, after the words “the^[1] [municipalities] of” and before the word “Dacca,” the words “[Howrah,] Patna” shall be inserted, and the following proviso shall be added:—

[Printed in Vol. II of this Code.]

35. In section 86, in clause (d), for the word “six” the words “seven and-a-half,” and for the word “five” the word “six” shall be substituted.

Of the Tax on Persons.

36. In Section 87, in the last paragraph, the words “of arable lands or” shall be omitted, and at the end thereof, the words “or in respect of the occupation of any public burial or burning ground registered under section two hundred and fifty-four” shall be inserted.

37. In section 89, for the word “is” after the word “which” the words “contains any building” shall be substituted; for the words “and used for the purposes of a public building” the words “* * *^[2] or of a local authority” shall be substituted, and at the end thereof the words “* * *^[3] or the local authority concerned” shall be inserted.

[¹] This word “municipalities,” in s. 34, was substituted for the word “municipality” by the Amending Act, 1903 (1 of 1903), Sch. II—see Vol. I of this Code.

[²] The words “or the Railway Administration” were repealed by Ben. Act 6 of 1894, and are omitted.

[³] The words “or the Railway Administration” were repealed by Ben. Act 6 of 1894, and are omitted.

Amendment
of section 76.

New section
substituted
for section 82

Amendment
of section
85.

Amendment
of section
86.

Amendment
of section
87.

Amendment
of section
89.

(Secs. 38-49.)

Of the Rate on Holdings.

38. In section 97, for the word "three" the word "five" shall be substituted. Amendment of section 97.

39. After section 97 the following section shall be inserted:—

97A. [Printed in Vol. II of this Code.] New section inserted after section 97.

40. To section 98 the following paragraph shall be added:—

[Printed in Vol. II of this Code.] Addition to section 98.

41. In section 99, after the words "authorized by them" the words "in writing" shall be inserted, and the following proviso shall be added:— Amendment of section 99.

[Printed in Vol. II of this Code.]

42. In section 101, in the second paragraph, after the words "Provided that" the words "except in the Darjeeling Municipality" shall be inserted. Amendment of section 101.

43. Immediately before section 112 the following section shall be inserted:—

111A. [Printed in Vol. II of this Code.] New section inserted before section 112.

44. To section 113, the following paragraph shall be added:—

[Printed in Vol. II of this Code.] Addition to section 113.

45. In section 114, for the word "Chairman" the words "Commissioners at a meeting" shall be substituted, and after the word "after" the words "taking such evidence and" shall be inserted. Amendment of section 114.

46. (*Amendment of section 116.*) *Rep. by the Repealing and Amending Act, 1903 (1 of 1903), now known as the Amending Act, 1903—vide Act 10 of 1914, Sch. II.*

47. In section 121, for the last paragraph, the following shall be substituted:— Amendment of section 121.

[Printed in Vol. II of this Code.]

48. To section 125 the following paragraph shall be added:—

[Printed in Vol. II of this Code.] Addition to section 125.

49. In section 127, for the words "goods or chattels" the words "movable property" shall be substituted, for the word "personal" wherever the same occurs, the word "movable" shall be substituted, and for the word "whatsoever" the words "exercising jurisdiction within the territories administered by the Lieutenant-Governor of Bengal" shall be substituted. Amendment of section 127.

New section
inserted
after section
141.

50. After section 141 the following section shall be inserted :—

141A. [Printed in Vol. II of this Code.]

51. (*Omission from section 142.*) *Rep. by the Repealing and Amending Act, 1903 (1 of 1903), now known as the Amending Act, 1903—vide Act 10 of 1914, Sch. II.*

New section
inserted
after section
147.

52. After section 147 the following section shall be inserted :—

147A. [Printed in Vol. II of this Code.]

Amendment
of section
186.

53. In section 186, after the word “ required ” the words “ by them ” shall be inserted.

Amendment
of section
187.

54. In section 187, after the word “ remove ” and before the word “ offensive ” the words “ sewage and ” shall be inserted.

Amendment
of section
199.

55. In section 199, after the word “ convenient ” the word “ wells ” shall be inserted, and for the last paragraph the following shall be substituted :—

[Printed in Vol. II of this Code.]

New section
inserted
after section
199.

56. After section 199 the following section shall be inserted :—

199A. [Printed in Vol. II of this Code.]

New section
substituted
for section
200.

57. For section 200 the following shall be substituted :—

200. [Printed in Vol. II of this Code.]

New section
substituted
for section
208.

58. For section 208 the following section shall be substituted :—

208. [Printed in Vol. II of this Code.]

New section
substituted
for section
210.

59. For section 210 the following section shall be substituted :—

210. [Printed in Vol. II of this Code.]

New section
inserted
after section
210.

60. After section 210 the following section shall be inserted :—

210A. [Printed in Vol. II of this Code.]

Amendment
of section
212.

61. In section 212, after the word “ section ” the words “ one hundred and seventy-five and ” shall be inserted.

Amendment
of section
217.

62. In section 217, in clause (4), after the words “ one hundred and ninety-nine ” the words and letter “ or one hundred and ninety-nine A ” shall be inserted.

Amendment
of section
218.

63. In section 218, after the words “ two hundred and four ” the words “ two hundred and six, two hundred and seven ” shall be inserted.

Amendment
of section
219.

64. In section 219, after the words “ two hundred and ten ” the words and letter “ two hundred and ten A ” shall be inserted.

(Secs. 65-77.)

65. To section 220 the following proviso shall be added:—

[Printed in Vol. II of this Code.]

Addition of
proviso to
section 220.

66. After section 223 the following section shall be inserted:—

*Of a Survey.*New section
inserted
after
section 223.

223A. [Printed in Vol. II of this Code.]

67. In section 236, after the words “ meeting may ” the words “ by Amendment
an order published in the manner prescribed in section three hundred and of section
fifty-four ” shall be inserted. 236.

68. For sections 237 to 241 the following sections shall be sub- New sections
stituted:— substituted
for sections
237 to 241.

237 to 241. [Printed in Vol. II of this Code.]

69. For section 242 the following section shall be substituted:—

242. [Printed in Vol. II of this Code.]

New section
substituted
for section
242.

70. After section 242 the following section shall be inserted:—

242A. [Printed in Vol. II of this Code.]

New section
inserted
after
section 242.

71. In section 243, after the word “ without ” the words “ one Amendment
month's ” shall be inserted, after the words “ front of ” the words “ each of section
line ” shall be inserted, and for the words “ each line ” the words “ every 243.
two lines ” shall be substituted.

72. After section 256 the following sections shall be inserted:—

256A, 256B. [Printed in Vol. II of this Code.]

New sections
inserted
after
section 256.

73. After section 260 the following section shall be inserted:—

260A. [Printed in Vol. II of this Code.]

New section
inserted
after
section 260.

74. (1) In section 261, after the words “ as a shop for the sale of Amendment
meat ” the words “ as a place for the storage of rags or bones or both, ” of section
shall be inserted. 261.

(2) For the last paragraph of the same section, the following shall be
substituted:—

[Printed in Vol. II of this Code.]

75. To section 262 the following proviso shall be added:—

[Printed in Vol. II of this Code.]

Addition of
proviso to
section 262.

76. After section 262 the following section shall be inserted:—

262A. [Printed in Vol. II of this Code.]

New section
inserted
after
section 262

77. (*Amendment of section 263.*) *Rep. by the Amending Act, 1903*
(1 of 1903.)

40 *The Bengal Municipal (Amendment) Act, 1894. [Ben. Act*
(Secs. 78-90.)

Amendment
of section
270.

78. In section 270, after clause (4), the following shall be added:—
 (5) [Printed in Vol. II of this Code.]

Amendment
of section
271.

79. In section 271, after the word "sections" the words "two hundred and twenty-four" shall be inserted; after the words "two hundred and twenty-five" the words "two hundred and twenty-seven" shall be inserted, and for the words "or two hundred and thirty-one" the words "two hundred and thirty-one or two hundred and thirty-eight" shall be substituted.

Amendment
of section
273.

80. In section 273, in clause (1), before the words "or two hundred and forty-one" the words "two hundred and thirty-eight" shall be inserted, and in clause (2) the following shall be added:—

[Printed in Vol. II of this Code.]

New section
substituted
for section
279.

81. For section 279 the following shall be substituted:—

279. [Printed in Vol. II of this Code.]

New section
substituted
for section
290.

82. For section 290 the following shall be substituted:—

290. [Printed in Vol. II of this Code.]

83. (*Omission from section 294.*) *Rep. by the Amending Act, 1903 (1 of 1903).*

Amendment
of section
307.

84. In section 307, after the words "maintaining the water-works" the words "in the payment of such a proportionate share of the cost of collection and of general supervision as the Commissioners in meeting may from time to time direct" shall be inserted.

New section
inserted
after
section 318

85. After section 318 the following section shall be inserted:—

318. [Printed in Vol. II of this Code.]

The Cleansing of Private Privies and Cess-pools.

Amendment
of section
320.

86. In section 320, the words "public and" shall be omitted, and for the word "latrines" the words "privies and cess-pools" shall be substituted.

Amendment
of section
321.

87. In section 321, in the first paragraph, after the word "holdings" the words "containing dwelling-houses" shall be inserted.

New section
substituted
for section
322.

88. For section 322 the following section shall be substituted:—

322. [Printed in Vol. II of this Code.]

89. (*Repeal of sections 327 and 328.*) *Rep. by the Amending Act, 1903 (1 of 1903).*

New section
inserted
after
section 334

90. After section 334 the following section shall be inserted:—

334A. [Printed in Vol. II of this Code.]

(Secs. 91-99.)

91. In section 339, after the word "Commissioners" the words "shall as regards markets lawfully established at the time of the extension of this Part to the municipality, and in all other cases" shall be inserted.

Amendment of section 339.

92. After section 349 the following sections shall be inserted:—

New sections inserted after section 349.

Part XIA.—Extinction and Prevention of fire.

349A, 349B. [Printed in Vol. II of this Code.]

93. In section 350, for the words "giving effect to the objects of this Act" the following shall be substituted:—

Amendment of section 350.

(a), (b), (c) to (f). [Printed in Vol. II of this Code.]

94. After section 350 the following section shall be inserted:—

New section inserted after section 350.

350A. [Printed in Vol. II of this Code.]

95. In section 351, the last paragraph shall be omitted, and at the end thereof the following paragraph shall be added:—

Amendment of section 351.

[Printed in Vol. II of this Code.]

96. After section 351 the following section shall be inserted:—

New section inserted after section 351.

351A. [Printed in Vol. II of this Code.]

97. In section 353, for the word "three," each time it occurs, the word "six" shall be substituted.

Amendment of section 353.

98. In section 365, after the word "Act" the words "or any by-law made in pursuance thereof" shall be inserted, and at the end thereof the following words shall be added:—

Addition to section 365.

[Printed in Vol. II of this Code.]

99. In the Fifth Schedule, after the words and figures:—

Addition to Schedule V.

Rs. As.

"For every 4-wheeled carriage drawn by one horse
or a pair of ponies under thirteen hands ... 3 0"

The words and figures following shall be inserted:—

"For every 4-wheeled carriage drawn by one pony
under thirteen hands ... 2 8"

1000

BENGAL ACT-3 OF 1895.

(THE LAND RECORDS MAINTENANCE ACT, 1895.)

CONTENTS.

PART I.

PRELIMINARY.

PREAMBLE.

SECTION

1. (1) Short title.
(2) Extent.
Commencement.
2. Interpretation-clause.

PART II.

REGISTRATION OF MUTATIONS.

- 3 Registrars of Mutations.
- 4 Registers.
- 5 Landlords' statements.
- 6 Notice of transfer or succession to be given to Registrar of Mutations.
- 7 The contents of the notice.
- 8 Duty of Registrar on receipt of notice from transferor or transferee.
- 9 Duty of Registrar on receipt of notice from successor.
- 10 Appearance by agent.
- 11 Powers-of-attorney.
- 12 Law as to summonses and commissions.
- 13 Reason for refusal to register to be recorded.
- 14 Procedure on denial of transfer.
- 15 Procedure when transferor's name not in record-of-rights.
- 16 Appeal against refusal to register.
- 17 Registrar to give receipt for notice and, if required, copy of entries in register.
- 18 Registrar to allow inspection, and to give certified copies of entries in register.
- 19 Fees to be fixed by the Local Government.
- 20 Fees under Tenancy Act.
- 21 Notice by non-occupancy or under-raiyats.
- 22 Registration of instruments effecting transfer of tenant-right and simultaneous registration of mutations.
- 23 Disability on failure to give notice.
- 24 Penalty for omission to give notice under section 6.
- 25 Penalty for omission to file statement under section 5.
- 26 Penalty for omitting to make entry or making incorrect entry in register with intent to injure.
- 27 Penalty for certain other offences.
 - (a) Making false statements before Registrar of Mutations.
 - (b) False personation.
 - (c) Abetment of certain offences.

The Land Records Maintenance [Ben. Act 3 of 1895.]
Act, 1895.

PART III.

SECTION.

RECOVERY OF EXPENSES OF A SURVEY AND PREPARATION OF A RECORD-OF-RIGHTS.

23. Recovery of expenses of initial survey, etc.
29. Area, rate and date of recovery of expenses.
30. Payment of expenses by proprietors.
31. Payment of expenses by tenants and rent-free owners and occupiers.
32. Recovery from successors in interest.

PART IV.

MISCELLANEOUS.

33. Registrars of Mutations to be public servants, and their records public records.
34. Appeals.
35. Local Government may vest officer with special appellate powers.
36. Power to make rules for selection, etc., of Sub-Registrars.

BENGAL ACT 3 OF 1895.

(THE LAND RECORDS MAINTENANCE ACT, 1895.)^[1]

(29th May, 1895.)

An act to provide for the maintenance of Records of tenant-rights in Bengal^[2] and for the recovery of the cost of Cadastral Surveys and Settlements.

Whereas it is expedient to provide for the maintenance of records of Preamble.
tenant-rights and of settlement records in Bengal,^[2] and for an alternative method of recovering the cost of cadastral surveys and settlements;

It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be called “The Land Records Maintenance Short title
Act, 1895.”

(2) It shall come into force only in districts or parts of districts of Extent
which a field survey and record-of-rights have been made under Chapter
8 of 1885. X of the Bengal Tenancy Act, 1885^[3] or under any other law for the
time being in force, and to which the Local Government may, from time
to time, extend it by an order^[4] published in the Calcutta Gazette;

and thereupon this Act shall commence and take effect in the districts Commence-
or parts of districts named in such order on the day which shall be in ment.
such order provided for the commencement thereof.

[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see*, Calcutta Gazette, 1895, Pt. IV, p. 4; and for Proceedings in Council, *see* *ibid*, 1895, Supplement, pp. 142, 326, 494, 599, 659 and 720.

LOCAL EXTENT.—This Act extends only to districts or parts of districts notified under s. 1.

The application of the Act is barred in—

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I, p. 864; and

in the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872, (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 777.

[2] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

[3] Printed in Vol. I of this Code.

[4] For references to orders made under section 1 (2) for Bihar and Orissa, *see* the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VI.

Interpreta-
tion-clause.

2. (1) In this Act all words and expressions defined in the Bengal Tenancy Act, 1885,^[1] shall have the meanings attributed to them, respectively, in that Act,

and the word "addition" shall have the meaning attributed to it in the Indian Registration Act, 1877.^[2]

(2) By the term "record-of-rights" shall be understood the settlement record of tenant-rights called the *khatian*, or such new editions of such record as may be prepared under rules made under this Act, or such other corresponding record of tenant-rights as may be declared by the Board of Revenue^[3] to form the record-of-rights for any district or part of a district. A record-of-rights includes entries duly made in a Register of Mutations.

PART II.

REGISTRATION OF MUTATIONS.

Registrars of
Mutations.

3. The Sub-Registrars appointed under the Indian Registration Act, 1877,^[1] shall be Registrars of Mutations under this Act.

Registers.

4. The Registrar of Mutations shall keep such registers as shall, from time to time, be prescribed by the Local Government, including, for every village within the limits of the sub-district, a Register of Mutations, in which there shall be recorded changes affecting the record-of-rights of that village, and containing such particulars as the Board of Revenue^[3] may, from time to time, with the sanction of the Local Government, prescribe.

Landlords'
statements.

5. (1) Whenever the Local Government shall issue a notification in the Calcutta Gazette to that effect, every landlord shall, within the period prescribed in the notification, file, in the office of the Registrar of Mutations, within the sub-district in which his tenants' land is situated, a statement, in a form to be prescribed by the Local Government, showing truly, to the best of his knowledge and belief, the changes, if any, which

^[1] Printed in Vol. I of this Code.

^[2] Act 3 of 1877 has been repealed and re-enacted by the Indian Registration Act, 1908 (16 of 1908), and this reference should now be construed as a reference to clause 2 (1) of section 2 of the latter Act, printed in the General Acts, 1904-09, Ed. 1909, p. 560—see the General Clauses Act, 1897 (10 of 1897), s. 8, in the General Acts, 1887-97, Ed. 1909, p. 579.

^[3] As to the present constitution and power of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), *post*, p. 385.

(Secs. 6-7.)

have taken place in his tenants' rights, by reason of transfer or succession, since the record-of-rights was prepared, or since the last statement was filed.

(2) The Collector of the district shall cause such notification to be published by affixing a copy thereof in some conspicuous place in the office of such Collector, in every Civil Court, in every police-station, and in the office of every Sub-divisional Officer within the district, and in any other manner which the Local Government may from time to time direct.

6. Every tenure-holder, *raiyat* at fixed rates and occupancy *raiyat*, who transfers his tenure or holding, or any part thereof, and every person claiming to be in possession of any tenure or holding as a tenure-holder, *raiyat* at fixed rates, or occupancy *raiyat* in consequence of a transfer or of intestate or testamentary succession, shall, within four months from the date upon which he gave or took possession, as the case may be, give notice of the fact to the Registrar of Mutations within whose sub-district the whole or some portion of the land to which the notice relates is situate, at his office:

Notice of transfer or succession to be given to Registrar of Mutations.

Provided that a notice under this section is receivable although the prescribed period has elapsed:

Provided further that when any person has duly given notice under this section, all other persons are released from the obligation of giving notice in respect of the same transfer or succession:

Provided further that when an instrument effecting a transfer of tenant-right has been registered under the provisions of the Indian Registration Act, 1877,^[1] all persons are released from the obligation of giving notice under this section in respect of the same transfer.

3 of 1877.

7. The notice shall contain:—

The contents of the notice.

(a) in the case of a transfer, the names of the transferor and the transferee or, in the case of a succession, the name of the deceased and his successor,

(b) a specification of the nature of the interest transferred, or acquired,

(c) the survey number of the lands as entered in the record-of-rights, and

(d) such further particulars as the Local Government may, from time to time, prescribe.

[¹] Act 3 of 1877 has been repealed and re-enacted by the Indian Registration Act, 1908 (16 of 1908), printed in the General Acts, and should now be construed as a reference to the Act (10 of 1897), s. 8, in the General Acts, 1897.

(Secs. 8-9.)

Duty of Registrar on receipt of notice from transferor or transferee.

8. (1) The Registrar of Mutations shall, on receipt of a notice under section 6, whether given within the prescribed period or not, from a transferor or transferee, ascertain if both the transferor and the transferee, or in the case of the death of either party since the transfer, if the one party and the representative of the other party admit the transfer, or in the case of the death of both parties if their respective representatives, admit the transfer, and if both transferor or transferee or their respective representatives admit the transfer, he shall, after satisfying himself as to the identity of the persons appearing before him, cause the following particulars to be endorsed on the notice (that is to say):—

(a) the signature and addition of every person admitting the transfer; and if such transfer has been admitted by the representative or agent of any person, the signature and addition of such representative or agent,

(b) any payment of money or delivery of goods made in the presence of the Registrar of Mutations in reference to the transfer, and any admission of receipt of consideration, in whole or in part made in his presence in reference to such transfer,

and shall affix the date and his signature to these endorsements,

and shall register the transfer in the Register of Mutations in such manner as the Local Government shall from time to time by rule prescribed.

(2) If necessary, the Registrar of Mutations may issue a summons for the attendance of either or both the transferor and transferee, or their respective representatives, either simultaneously or at different times, at his office;

Provided that, in lieu of issuing a summons, he shall either himself go and examine, or issue a commission for the examination of any person who is:—

(a) exempt by law from personal appearance in Court,

(b) unable by reason of bodily infirmity, without risk or serious inconvenience, to attend at the office, or

(c) in jail under Civil or Criminal process.

Duty of Registrar on receipt of notice from successor.

9. The Registrar of Mutations on receipt of a notice under section 6, whether within the prescribed period or not, from a person claiming by succession, shall, after satisfying himself as to the identity of such person and causing the signature and addition of such person to be

(Secs. 10-11.)

endorsed on the notice by a notice affixed in a conspicuous place, and by beat of drum, in the village in which the land claimed is situated, call upon any person who desires to do so to appear before him at his office within one month from the date of the last-mentioned notice, and deny the succession, and if within that period no one appears and denies the succession, he shall endorse a statement of the fact on the notice, affixing the date and his signature to the endorsements, and shall register the succession in the Register of Mutations in such manner as the Local Government shall from time to time by rule prescribe.

10. Notwithstanding anything contained in sections 8, 9 and 12, any person may attend at the office of the Registrar of Mutations by agent duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned. Appearance by agent.

11. (1) For the purposes of the last preceding section, the powers-of-attorney here mentioned shall alone be recognized— Powers-of-attorney.

(a) if the principal at the time of executing the power-of-attorney resides in British India, a power-of-attorney executed before and authenticated by any Magistrate or the Registrar or Sub-Registrar appointed under section 6 of the Indian Registration Act, 1877,^[1] within whose district or sub-district the principal resides:

(b) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul or representative of Her Majesty or of the Government of India:

Provided that the following persons shall not be required to attend at any office or Court for the purpose of executing any such power-of-attorney as is mentioned in clause (a) of this section:—

- persons exempt by law from personal appearance in Court;
- persons who by reason of bodily infirmity are unable, without risk or serious inconvenience, so to attend; and
- persons who are in jail under Civil or Criminal process.

(2) In every such case the officer, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court. To obtain evidence as to the voluntary

^[1] Act 3 of 1877 has been repealed and re-enacted by the Indian Registration Act, 1908 (16 of 1908), printed in the General Acts, 1904-09, Ed. 1909, p. 560 and this reference should now be construed as a reference to section 6 of the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in the General Acts, 1887-97, Ed. 1909, p. 579.

(Secs. 12-16.)

nature of the execution, the officer may go to the person purporting to be the principal and examine him or issue a commission for his examination. Any power-of-attorney mentioned in this section may be proved by the production of it without further proof, when it purports on the face of it to have been executed before and authenticated by the officer hereinbefore mentioned in that behalf.

Law as to
summonses
and commis-
sions.

12. The law for the time being in force as to summonses, commissions and the compelling the attendance of persons summoned in suits before Civil Courts shall, *mutatis mutandis*, apply to any summons or commission issued, and any person summoned, under this Act.

Reason for
refusal to
register to be
recorded.

13. Whenever a Registrar of Mutations, after receipt of a notice under section 6, does not register the transfer or succession in respect of which it is given, he shall make an entry of the fact and state his reasons in such manner as the Local Government may from time to time prescribed.

Procedure on
denial of
transfer.

14. If any of the persons purporting to have signed the notice, or any one mentioned therein as transferor or transferee or in the case of the death of either, if his representative denies the transfer,

or if any such person appears to be a minor, an idiot, or a lunatic, or

if any person, where the claim is by succession, appears before the Registrar on issue of a notice under section 9, and denies the succession,

the Registrar of Mutations shall refuse to register the mutation.

Procedure
when trans-
feror's name
not in record-
of-rights.

15. If the name of a transferor, or of a deceased person through whom succession is claimed, inserted, in a notice given under section 6, is not recorded in the record-of-rights as that of the person in possession of the land specified in the notice, the Registrar of Mutations shall, without registering the transfer or succession, as the case may be, by a notice, affixed in a conspicuous place, and by beat of drum, in the village in which the land claimed is situated, call upon any person who desires to do so to appear before him at his office within one month from the date of the last-mentioned notice and deny that the alleged transferor, or deceased person through whom succession is claimed, was at the time of the alleged transfer in possession of the land specified in the notice.

And if no person within the prescribed period so appears and denies, the Registrar of Mutations shall, if the other provisions of the Act are complied with, record the transfer or succession, the subject of the notice, in the Register of Mutations.

Appeal
against re-
fusal to re-
gister.

16. (1) When a Registrar of Mutations has made an order refusing to register a transfer or succession, an appeal shall lie within thirty days from the date of the order against such order to the Collector of the district to whom such Registrar of Mutations is subordinate; and the

(Secs. 17-19.)

Collector may, after taking such evidence as he thinks necessary, reverse or alter such order: and if the Collector directs the transfer or succession to be registered, the Registrar of Mutations shall obey such order.

and such registration shall take effect as if the transfer or succession had been registered when the notice was first given under section 6.

(2) No appeal shall lie from any order of a Collector passed under this section.

17. The Registrar of Mutations shall give to the person giving a notice under section 6, a receipt therefor, and shall upon his application, grant to him, free of charge, a copy of the entries made in the Register of Mutations in pursuance of such notice.

Registrar to give receipt for notice and, if required, copy of entries in register.

18. (1) On payment of the prescribed fees, the Register of Mutations shall be open to inspection by any person applying to inspect the same, and a copy of any entry therein shall be given to any person applying therefor.

Registrar to allow inspection and to give certified copies of entries in Register.

(2) Copies given under this section shall be signed and sealed by the Registrar of Mutations and shall be admissible for the purpose of proving the contents of the original entry.

19. (1) The Local Government shall from time to time prepare tables of fees payable—

Fees to be fixed by the Local Government.

(a) for the registration of mutations—

(i) within the prescribed period,

(ii) after the prescribed period,

(b) for copies of entries in the Register of Mutations,

(c) for inspecting the Register of Mutations,

(d) for notices, processes and commissions given or issued under this Act,

(e) for such other matters as appear to the Local Government necessary to effect the purposes of this Act,

and may from time to time alter such tables.

(2) Tables of fees so payable shall be published in the Calcutta Gazette, and a copy thereof, in English and the Vernacular language of the district, shall be exposed to public view in the office of every Registrar of Mutations.

(3) All fees for the registration of mutations shall be payable at the time when the notice is given under section 6.

Fees under
Tenancy Act.

20. The fees payable to the Collector under sections 15 and 18 of the Bengal Tenancy Act, 1885,^[1] may be paid to the Registrar of 8 of 1885 Mutations, when notice is given under section 6, and such payment shall be held to be payment to the Collector, and the Registrar of Mutations shall forthwith transmit all fees so paid to the Collector, and such notice to the Registrar of Mutations shall be held to be a notice to the Collector under sections 15 and 18 of the Bengal Tenancy Act, 1885.^[1] 8 of 1885.

Notice by
non-occupan-
cy or under-
raiyats.

21. Any non-occupancy *raiyat* or under-*raiyat*, if he thinks fit, may give any notice which a tenure-holder *raiyat* at fixed rates and occupancy *raiyat* is bound to give under section 6, and if he gives such notice, the provisions of this Act, as far as they are applicable, shall thereupon apply.

Registration
of instru-
ments effect-
ing transfer of
tenant-right
and simul-
taneous re-
gistration of
mutations.

22. A Sub-Registrar, registering an instrument effecting a transfer of tenant-right, or under the provisions of sections 64 and 65 of the Indian Registration Act, 1877,^[2] receiving a memorandum of a transfer 3 of 1877. of tenant-right, shall, as Registrar of Mutations, make an entry in the Register of Mutations as if he had received a notice under section 6.

Disability on
failure to
give notice.

23. (1) No person bound to give notice under section 6 shall, after the period therein mentioned, be entitled to obtain a decree for, or recover, the rent of any land the subject of the transfer or succession until he has given such notice, and if the defendant denies that the notice has been given, or if the Court thinks fit, it may require him to file a certified copy of the entry in the Register of Mutations relative to such land, or to adduce evidence to the satisfaction of the Court that the notice was duly given.

(2) No tenant bound to give notice under section 6 shall, after the period therein mentioned, in any suit in which his landlord is plaintiff and he is a defendant, be entitled to adduce evidence that he is a tenure-holder, *raiyat* at fixed rates or *raiyat* with a right of occupancy in the land held by him until he has given such notice, but the Court in which any such suit is tried shall afford the defendant sufficient time to enable him to give such notice.

Penalty for
omission to
give notice
under sec-
tion 6.

24. Whoever voluntarily or negligently omits to give, within the prescribed time, notice under section 6, shall be liable to such fine, not exceeding fifty rupees, as the Collector of the district may see fit to impose.

^[1] Printed in Vol. I of this Code.

^[2] Act 3 of 1877 has been repealed and re-enacted by the Indian Registration Act, 1908 (16 of 1908), printed in the General Acts, 1904-09, Ed. 1909, p. 560, and this reference should now be construed as a reference to sections 64 and 65 of the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in the General Acts, 1887-97, Ed. 1909, p. 579.

(Secs. 25-28.)

25. After a notification has been issued under section 5, whoever voluntarily or negligently omits to file, within the period therein specified, the required statement, shall be liable to such fine, not exceeding one hundred rupees, as the Collector of the district may see fit to impose: Penalty for omission to file statement under section 5.

Provided that no person shall be fined under this or the last preceding section who at any time prior to the institution of proceedings thereunder, or in the discretion of the Collector of the district at any time after such institution, has filed the statement required by section 5 or given the notice required by section 6.

26. Every Registrar of Mutations and every person employed in his office for the purposes of this Act, who being charged with the duty of making any entry in the Register of Mutations, voluntarily omits to make such entry, or makes any entry therein which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury, as defined in the Indian Penal Code, [1] to any person, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both. Penalty for omitting to make entry or making incorrect entry in Register with intent to injure.

27. Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both:— Penalty for certain other offences.

- (a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any Registrar of Mutations in any proceeding or inquiry under this Act; Making false statements before Registrar of Mutations.
- (b) falsely personates another, and in such assumed character presents any notice or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or inquiry under this Act; False personation.
- (c) abets, within the meaning of the Indian Penal Code, [1] any thing made punishable under this or the last preceding section. Abetment of offence.

from all or any of the proprietors, landlords, tenants and rent-free owners and occupiers in any district or part of a district, either in one year or several years, and in the manner specified in the sections following, their shares of all the expenses declared by the Local Government to be recoverable from proprietors, landlords, tenants and rent-free owners and occupiers, which have been incurred in making a survey and record-of-rights and a settlement of rents under Chapter X of the Bengal Tenancy Act, 1885,^[1] such costs not having been incurred for the purposes of a settlement of land-revenue.

Area, rate
and date of
recovery of
expenses.

29. The Local Government may from time to time determine the total expenses which have been incurred in any district or part of a district in making a survey and record-of-rights, and the amounts (in such proportions as the Local Government may from time to time determine) which shall be paid by the proprietors, landlords, tenants and rent-free owners and occupiers, respectively, in such district or part of a district, and the date from which the expenses aforesaid shall be recovered; and may specify the rate per acre to be paid by the said proprietors, landlords, tenants and rent-free owners and occupiers.

Payment of
expenses by
proprietors.

30. The amount due from proprietors shall be paid together, with such instalment of land-revenue as the Local Government may direct, and arrears shall be recoverable under the law^[2] for the time being in force for the recovery of public demands.

Payment of
expenses by
tenants and
rent-free
owners and
occupiers.

31. The amount due from tenants and rent-free owners and occupiers shall, subject to any orders passed by the Local Government under section 28, be paid by them to the Settlement Officer, on tender of such extract from the record-of-rights as they may be entitled to receive.

Arrears shall be recoverable under the law^[2] for the time being in force for the recovery of public demands.

Recovery
from succes-
sors in in-
terest.

32. When any proprietor, landlord, tenant or rent-free owner or occupier liable to pay any portion of the expenses under an order passed under this Part since such expenses were incurred, has died or has transferred, in whole or in part, his interest in any land on account of which he may have become liable and such portion of the expenses remains unpaid, it shall be lawful for the Collector to recover the said expenses, or any portion thereof, from the person in possession of such interest or portion thereof.

Such expenses shall be recoverable under the law^[2] for the time being in force for the recovery of public demands.

^[1] Printed in Vol. I of this Code.

^[2] See the Bihar and Orissa Public Demands Recovery Act, 1914 (Bihar and Orissa Act 4 of 1914), *post*, p. 557.

(Secs. 33-36.)

PART IV.

MISCELLANEOUS.

33. Every Sub-Registrar appointed under this Act to be a Registrar of Mutations, and every person appointed temporarily to discharge the duties of any such office, shall be deemed to be a public servant within the meaning of section 21^[1] of the Indian Penal Code and all official records and papers kept by any such officer under this Act shall be held to be public records and the property of Government.

Registrars of Mutations to be public servants, and their records public records.

34. Every order of a Registrar of Mutations affecting any entry in the Register of Mutations shall be appealable for a period of one month from the date thereof to the Collector of the District.

Appeals.

No appeal shall lie from any order of a Collector passed under this section.

35. The Local Government may from time to time vest any officer other than the Collector of the district with special appellate powers under this Act: and every officer so vested shall be competent to hear and decide any appeal which the Collector of the district is competent to hear and decide under this Act.

Local Government may vest officer with special appellate powers.

36. (1) The Local Government, or the Board of Revenue with the sanction of the Local Government, may, from time to time, make, repeal and alter rules,^[2] consistent with this Act—

Power to make rules for selection, etc., of Sub-Registrars.

- (a) regarding the appointment, control, discipline and payment of all Registrars of Mutations and their establishments;
- (b) prescribing the manner of making entries of mutations in the record-of-rights, preparing new editions of such records, and re-publishing them from time to time, or otherwise making them available for public information;
- (c) regarding the distribution of the expenses incurred under Part III, and
- (d) generally for the purpose of giving effect to the provisions of this Act.

(2) The provisions of section 190 of the Bengal Tenancy Act, 1885,^[3] shall apply to rules made under clauses (b), (c) and (d).

^[1] Printed in the General Acts, 1834-67, Ed. 1909, p. 252.

^[2] For a list of rules made under section 36 for Bihar and Orissa, see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VI.

^[3] Printed in Vol. I of this Code.

BENGAL ACT 8 of 1895.

(THE BENGAL SANITARY DRAINAGE ACT, 1895.)

CONTENTS.

PART I.

CHAPTER I.

PRELIMINARY.

SECTION

1. Short title and extent.
(Commencement.) *Repealed.*
2. Definitions.

CHAPTER II.

APPOINTMENT OF THE COMMISSIONERS.

- 3 Appointment of the Commissioners
- 4 Procedure when several local authorities are interested.
- 5 Resignation of the Commissioners.

PART II.

CHAPTER I.

DRAINAGE SCHEME.

6. The Commissioners to direct survey, etc, and forward survey and preliminary scheme to the Collector.
7. The Collector to publish notification.
- 8 The Commissioner to consider the survey preliminary scheme and objections and report thereon
- 9 District Board to consider the survey and preliminary scheme.
- 10 Procedure, if survey and preliminary scheme are rejected
11. Procedure, if survey and preliminary scheme are adopted.
12. Procedure to be followed by the Collector.
13. "Scheme" and "local area."
14. Powers of Local Government.
- 15 District Board may re-consider scheme, etc., adopted by them.
- 16 Land required for drainage works how to be acquired.
17. Local Government may order execution of drainage works by an Engineer appointed by it

CHAPTER II.

EXPENDITURE AND APPORTIONMENT.

18. What amounts should be included in cost of construction.
19. Engineer to report progress and completion of works.
20. Amount to be apportioned how to be determined.

SECTION.

21. The Collector to determine rate.
22. Rate to be published and to be paid with the road cess.
23. Share to be recovered by estate or tenure-holder.
24. Amount to be recovered by tenure-holder from *raiyyat*.
25. Recovery of municipal portion of cost.

PART III.

CHAPTER I.

MISCELLANEOUS.

26. Drainage works subject to laws relating to public embankments.
27. Penalty for constructing weirs, etc., obstructing public drainage.
28. Lands taken and works constructed under Act to be under District Board.
29. Powers of the Commissioners, etc., in taking evidence.
30. Proceedings not to be invalidated by irregularities.
31. Local Government may empower any person to act for the Collector.
32. The Collector may delegate his authority to another.
33. Proceedings of the Commissioners and the Collector subject to control of Commissioner of Division.
34. Local Government may direct cessation of work and revision of the scheme.

CHAPTER II.

RULES.

35. Power of Local Government to make rules and to cancel them.
- SCHEDULE.

(THE BENGAL SANITARY DRAINAGE ACT, 1895.)[1]

An Act to facilitate the construction of drainage works for improving the sanitary condition of local areas.

Ben. Act 3
of 1884.

PART I.

PRELIMINARY.

(2) Except as hereinafter otherwise provided, [4] it shall extend to all the territories administered by the Lieutenant-Governor of Bengal[2] which are not included within the limits of any municipality.

2. In this Act, unless there be something repugnant in the subject Definitions, or context,—

(a) "cultivating *raiya*t" shall have the meaning attached to it in the Cess Act, 9 (B.C.) of 1880: [5]

[1] LEGISLATIVE DEBATES: See Statement of Objects and Reasons in the Calcutta Gazette, 1894, Pt. IV, Proceedings in Council, pp. 149, 150; and for the same, *ibid.*, 1895, Supplement, pp. 149, 150.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal—
see s. 1 (2), but its application is barred in—

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I, p. 864; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 777.

[²] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

[¹] Printed in Vol. II of this Code.

[4] The meaning of this exception would appear to be that the Act is to some extent (see sections 6 and 25, *post*, pp. 61 and 67) applicable to municipalities.

[⁵] Printed in Vol. II of this Code.

(Sec. 3.)

- (b) "estate" shall have the meaning attached to it in the Cess Act, 9 (B.C.) of 1880:[¹]
- (c) "holder of an estate or tenure" shall have the meaning attached to it in the Cess Act, 9 (B.C.) of 1880:[¹]
- (d) "local area" means the portion of a district or districts within which a rate is to be levied, in order to liquidate the cost of a scheme adopted by a District Board:[²]
- (e) "tenure" shall have the meaning attached to it in the Cess Act, 9 (B.C.) of 1880:[¹]
- (f) "the Collector" means, except as hereinafter[³] provided the officer in charge of the revenue jurisdiction of the district within which the lands, which form the subject of a scheme under this Act, are situated:
- (g) "the Commissioners" means the Drainage Commissioners under this Act:
- (h) "the Engineer" means the District Engineer or any Engineer especially appointed by the Local Government to perform the functions of an Engineer under this Act:
- (i) "tract" means the portion of a district or districts throughout which the Commissioners are authorized to exercise the functions conferred on them under this Act:[⁴]

CHAPTER II.

APPOINTMENT OF THE COMMISSIONERS.

Appointment
of the Com-
missioners.

3. (1) Whenever an application is received from a District Board through the Collector and the Commissioner of the Division reporting that they believe that the sanitary condition of any tract within their jurisdiction has been deteriorated by the obstruction of drainage, whether from natural or artificial causes, the Local Government may—

- (a) issue, if it think fit, an order[⁵] indicating approximately the area of the tract affected and prescribing the appointment of a number of persons, not less than nine, to be the Drainage Commissioners;

[¹] Printed in Vol. II of this Code.

[²] See also s. 13, *post*, p. 64.

[³] See sections 6 (1), 31, 32 and 35 (g), *post*, pp. 61, 68 and 69.

[⁴] For explanation of the terms "scheme" and "local area," see s. 13, *post*, p. 64.

[⁵] For a list of orders made under section 3, clauses (a) and (b), for Bihar and Orissa, see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VI.

(Secs. 4-6.)

(b) direct^[1] the District Board to elect not less than half of such number from among the members of the District or Local Board as the case may be;

(c) appoint the remainder of the Commissioners from among the holders of estates and tenures in the tract affected or from among the managers on behalf of such holders.

(2) The Commissioners so created shall elect one of their number to act as Chairman.

4. (1) When an affected tract referred to in the last preceding section includes lands subject to the jurisdiction of more than one local authority, the Local Government, by an order made on the application of any District Board concerned, may constitute a joint Committee to be elected by all the local authorities concerned; the number to be elected by each being determined by the Local Government as far as possible in proportion to the interest of such local authority in the tract affected. Procedure when several local authorities are interested.

(2) The Local Government may further confer on any Committee so constituted, or on such of them as may be specified in the order, all the powers of a District Board under this Act; and such order may contain such provisions respecting the proceedings of any such Committee as may seem proper, and may provide for the payment by the local authorities represented thereby of the expenses incurred by any such Committee and for the audit of accounts.

5. The Local Government may from time to time accept the resignation of any of the Commissioners, or may add to their number; and in the event of any Commissioner dying, retiring or ceasing to reside in the district, in which such tract is situated, the vacancy so caused shall thereupon be filled by appointment or by election, as the case may be; the conditions of the original appointment or election being in each case strictly observed. Resignation of the Commissioners.

Provided that not less than half the number of the Commissioners shall always be members of the District or Local Board, as the case may be.

PART II.

CHAPTER I.

DRAINAGE SCHEME.

6. (1) When the Commissioners have been appointed under section 3 or section 5, they shall, without delay, direct the Engineer to prepare The Commissioners to direct survey.

[1] For a list of orders made under section 3, clauses (a) and (b), for Bihar and Orissa, see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VI.

(Sec. 7.)

etc., and
forward
survey and
preliminary
scheme to
the Collec-
tor

a survey, plans and estimates (hereinafter called "the survey") for the restoration or improvement of the drainage of the tract found by him to be affected, and such survey shall be drawn up in accordance with rules to be framed under section 35 (1) (a).

On the completion of the survey the Commissioners shall, within a period to be fixed by the District Board which made the application (hereinafter called "District Board"), forward the same to the Collector of the district within which the tract affected, or the principal part of it, is situated, together with a report (hereinafter called "preliminary scheme") containing—

- (a) a statement descriptive of the proposed undertaking, and showing how the drainage is obstructed, with a map of the tract affected;
- (b) an estimate of the total cost of the undertaking, including the cost of any land to be acquired under section 16;
- (c) an estimate of the annual cost of maintaining the works:

Provided that, if the tract affected includes any municipal area, the estimate to be framed under clauses (b) and (c) of this section shall show separately the portion of the cost under each clause, which will be incurred in respect of such municipal area:

Provided further that, if one or more municipalities fall within the tract, a separate estimate shall be framed of the cost of constructing and maintaining such portion of the works as lies within the area of any such municipality.

(2) The Collector shall thereupon cause to be prepared—

- (d) a statement showing the valuation for cess purposes of the lands included in the tract affected, and the total amount of cesses actually payable on the same;
- (e) an estimate showing the rate, bearing a definite proportion to the road cess^[1] payable direct to Government, which would provide for the payment with interest in the course of thirty years of the amount under clause (b) and the capitalised value of the amount under clause (c) of this section, excluding the portion to be incurred in respect of the municipal area, if any.

The Collector
to publish
notification.

7. As soon as possible after the receipt of the survey and preliminary scheme, the Collector shall publish in every village in the tract affected a notification in the language of the district, calling for objections.

[¹] The road cess is imposed under the Cess Act, 1880 (Ben. Act 9 of 1880), printed in Vol. II of the Code.

(Secs. 8-12.)

Such notification shall be in the form in the Schedule hereto annexed and may be published by posting the same at each post office and police-station within such tract and in some conspicuous part of each village and at the Court of the *Munsif* within whose jurisdiction such village, or any part thereof is situated.

8. As soon as practicable after the expiry of the period fixed by such notification, the Collector shall forward to the Commissioners the survey and preliminary scheme, together with the petitions of objection, if any, received by him, and shall call upon them to consider such survey and preliminary scheme together with such objections, and within a specified time to forward such survey and preliminary scheme to the Chairman of the District Board together with their report upon the objections, if any, as well as upon the state of public feeling in regard to such survey and preliminary scheme, and their advice as to their adoption or rejection.

The Commissioners to consider the survey, preliminary scheme and objections, and report thereon.

9. On receipt of such survey and preliminary scheme, the District Board shall within one month's time proceed to take them into consideration at a meeting specially called for the purpose.

District Board to consider the survey and preliminary scheme.

10. If the District Board reject such survey and preliminary scheme, the cost of such survey and the salary, if any, of the Engineer directed to prepare the same shall be paid by the District Board.

Procedure, if survey and preliminary scheme are rejected.

11. If, at such meeting, a majority of the members present acting on the advice of the Commissioners, or, with the approval of a majority of not less than two-thirds of such members (such meeting to consist of not less than one-half of the total number of the members of the Board), acting against the advice of the Commissioners, adopt the survey and preliminary scheme, they shall revise the preliminary scheme in the following manner:—

Procedure if survey and preliminary scheme are adopted.

(i) they shall deduct from the aggregate amount estimated under clauses (b) and (c) of section 6 the sums, if any, which have been either anticipated or promised as private subscriptions or contributed by the District Board, or provisionally promised by the Local Government;

(ii) they shall thereupon submit the preliminary scheme so revised, together with the survey and the report prepared by the Commissioners under section 8, to the Collector.

12. The Collector shall thereupon—

(a) calculate the amount, which, if expressed as a rate bearing a definite proportion to the road cess^[1] leviable within the

Procedure to be followed by the Collector.

[1] The road cess is imposed under the Cess Act, 1880 (Ben. Act 9 of 1880), printed in Vol. II of this Code.

(Secs. 13-16.)

tract affected, would pay off the balance in equal annual instalments within thirty years (such instalments being fixed), so as to provide for the payment of interest on any sums borrowed from Government or the public;

- (b) forward such survey and preliminary scheme through the Commissioner of the Division to the Local Government for consideration :

Provided that, if the instalments so fixed shall exceed the amount annually payable as road cess^[1] within the tract affected, the Collector shall return such preliminary scheme to the District Board for further consideration.

"Scheme"
and "local
area."

13. The "survey and preliminary scheme" thus adopted or modified shall be hereinafter called the "scheme," and the tract within which the new drainage rate is to be imposed shall be hereinafter called the "local area."

Powers of
Local Gov-
ernment.

14. The Local Government shall consider the scheme thus adopted or revised, together with the report of the Commissioners, and may approve, modify or reject the same; and if it approve or modify the scheme, it shall thereupon return it, so approved or modified, to the District Board through the Commissioner of the Division, with an intimation of the amount which the Local Government will contribute towards the scheme :

Provided that, if the modification adds materially to the cost of the operations, the scheme thus modified shall again be laid before the District Board for their consideration.

District
Board may
re-consider
scheme, etc.,
adopted by
them.

15. (1) The District Board may, with the previous consent of the Local Government, at any time re-consider the scheme adopted by them, and add to, alter or modify the same; and if any addition, alteration or modification is thereupon made by them, they shall lay before the Local Government the scheme so added to, altered or modified, and the Local Government may sanction the same or any portion thereof; and thenceforth the provisions of this Act shall apply to the scheme as ultimately sanctioned by the Local Government.

(2) Every material addition, alteration or modification made by the Local Government or by a District Board to, or in, any scheme after the adoption thereof, shall be published in the manner provided in section 7, and the provisions of sections 8 to 12 (both inclusive) shall apply.

Land re-
quired for
drainage

16. Any land, likely to be needed in carrying out any scheme, sanctioned by the Local Government under this Act, may be acquired under

^[1] The road cess is imposed under the Cess Act, 1880 (Ben. Act 9 of 1880), printed in Vol. II of this Code.

(Secs. 17-19.).

1 of 1894. the provisions of the Land Acquisition Act, 1894,^[1] or any similar works how to be acquired. Act for the time being in force for the acquisition of land for public purposes:

Provided that no compensation shall be paid for land recorded as a water course in the last revenue survey map published under section 4 of Act 9 of 1847^[2] or any similar enactment for the time being in force, unless it be proved that such land has been under cultivation for a period of not less than twelve years previous to the acquisition.

17. (1) All works under this Act shall be executed by the District Board, unless the Local Government order such works, or any portion of them, to be executed by more than one District Board or by an Engineer appointed in that behalf by itself. Local Government may order execution of drainage works by an Engineer appointed by it.

(2) Any person duly authorized to execute any works under this Act may himself, or by his agents and workmen, enter into or upon any lands forming part of the local area, and carry out such works thereupon as may be required.

CHAPTER II.

EXPENDITURE AND APPORTIONMENT.

18. All amounts paid—

- (a) as compensation for any lands taken for the purposes of this Act;
- (b) as salaries of the engineer, officers, servants or establishments specially employed by the Collector, the Commissioners or the District Board for the purposes of this Act;
- (c) for any surveys, plans, estimates, valuations and incidental expenses connected therewith, whether antecedent or subsequent to the adoption of the scheme,

What amounts should be included in cost of construction

together with all amounts expended in carrying out the purposes of this Act, shall be included in, and be deemed to constitute, the cost of construction of works.

19. (1) The Engineer shall, once in every three months, until the work shall be finally completed, submit to the District Board a detailed report showing the progress of the works and the amount expended thereon up to date from the commencement of the work or from the date of the last report; and when the works are completed and the accounts closed, he shall submit to the District Board a final report showing the total cost. Engineer to report progress and completion of works.

[1] Printed in the General Acts, 1887-97, Ed. 1909, p. 363.

[2] The Bengal Alluvion and Diluvion Act, 1847. It is printed in Vol. I of this Code.

(2) If the local area includes areas subject to the jurisdiction of more than one local authority, the proportion of such cost shall be defrayed by each local authority as far as possible in proportion to their interest in the work executed.

(3) The District Board shall forward a copy of this report to the Local Government through the Commissioner of the Division, with such remarks as to them shall seem fit, and in the event of any local authority objecting to the proposed apportionment, the Local Government shall determine the proportion to be paid by them. The decision of the Local Government thereon shall be final.

20. The total cost of construction mentioned in section 18 shall be ascertained by adding together—

- (a) the actual amount expended;
- (b) the interest payable on the loans under the Local Authorities Loan Act, 1879,^[1] if any;
- (c) the capitalized value of the estimated cost of maintenance.

11 of 1879.

From this sum shall be deducted the amounts subscribed or contributed as contemplated in sections 11 and 14.

21. On receipt of the final report mentioned in section 19, the District Board shall require the Collector, within three months, to determine the amount of rate, which shall be collected with the road cess^[2] annually payable direct to Government within the local area, and shall be sufficient to provide for the payment of the cost of construction as defined in section 20, in the course of not more than thirty years, excluding the portion to be incurred in respect of the municipal area, if any.

22. (1) The rate so determined shall be published as provided in section 40 of the Cess Act, 1880,^[3] and shall be paid together with the road cess payable by those liable to pay such cess direct to Government within the local area, until such time as the period of not more than thirty years from the date of publication shall have expired; or the cost of construction of the works has been liquidated.

Ben. Act 9 of 1880.

(2) All arrears of such rates shall be recoverable under the law^[4] for the time being in force for the recovery of public demands.

^[1] Act 11 of 1879 has been repealed and re-enacted by the Local Authorities Loans Act, 1914 (9 of 1914), and this reference should now be construed as a reference to the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in the General Acts, 1887-97, Ed. 1909, p. 579.

^[2] The road cess is imposed under the Cess Act, 1880 (Ben. Act 9 of 1880), printed in Vol. II of this Code.

^[3] Printed in Vol. II of this Code.

^[4] See the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), printed, *post*, p. 557.

Amount to be apportioned how to be determined.

The Collector to determine rate.

Rate to be published and to be paid with the road cess.

(Secs. 23-26.)

23. Any holder of an estate or tenure who shall pay to the Collector any instalment of such rate payable under the last preceding section shall be entitled to recover half the amount of the instalment so paid from the holder of a tenure or cultivating *raiyat* holding lands within the local area under such holder of an estate or tenure in the same proportion and in the same manner as he is entitled to recover road cess or public works cess, payable under the provisions of the Cess Act, 1880.^[1]

Share to be recovered by estate or tenure-holder.

Ben. Act 9 of 1880.

24. Any holder of a tenure, who shall pay to the holder of an estate or tenure the sum due to such holder under the last preceding section, shall be entitled to recover half the sum so paid from the cultivating *raiyats* holding lands within the local area under such holder of a tenure, in the same proportion and in the same manner, as he is entitled to recover road cess or public works cess, payable under the provisions of the Cess Act, 1880.^[1]

Amount to be recovered by tenure-holder from *raiyat*.

Ben. Act 9 of 1880.

25. (1) When the local area includes a municipal area, the amount payable under section 19 shall be defrayed by the municipality.

Recovery of municipal portion of cost.

(2) In order to provide for the payment with interest of such municipal share at the rate payable to Government by the District Board within a period of not less than thirty years, the amount required may be raised by an additional rate to be added to the tax upon persons or to the rate on the annual value of holdings, as the case may be.

PART III.

CHAPTER I.

MISCELLANEOUS.

26. All outlets and water-channels, natural or artificial, which shall be cleared, altered, enlarged, excavated or cut under the provisions of this Act, and the construction and maintenance of embankments and dams and works therein or connected therewith, shall be subject to the law^[2] for the time being in force regulating the construction and maintenance of public embankments, rivers, channels and outlets.

Drainage works subject to laws relating to public embankments.

^[1] Printed in Vol. II of this Code.

^[2] See—the Bengal Embankment Act, 1855 (32 of 1855), in Vol. I of this Code; the Bengal Embankment Act, 1866 (Ben. Act 7 of 1866), in Vol. II of this Code; the Bengal Embankment Act, 1873 (Ben. Act 6 of 1873), in Vol. II of this Code; the Bengal Embankment Act 1882 (Ben. Act 2 of 1882), in Vol. II of this Code.

(Secs. 27-32.)

Penalty for constructing weirs, etc., obstructing public drainage.

27. (1) Any person who, without lawful authority, erects, or causes to be erected, any weir or other obstruction in any outlet or water-channel, or cultivates the bed of a water-channel, so as to obstruct natural drainage, shall, upon conviction before a Magistrate, be liable to a penalty not exceeding two hundred rupees for every such offence.

(2) It shall be in the discretion of such Magistrate to direct any such offender to remove and pay for the entire cost of the removal of any such obstruction.

Lands taken and works constructed under Act to be under District Board.

28. All lands which are taken under the provisions of this Act for the purpose of the construction of works therein or thereon, and all works constructed under the provisions of this Act, as well as all outlets, water-channels, embankments and dams so constructed, cleared, altered, enlarged, excavated or cut, shall be under the control and administration of the District Board.

Powers of the Commissioners, etc., in taking evidence.

29. The Commissioners, the Collector, and the Commissioner of the Division shall have all such powers as are conferred on Civil Courts by the Code of Civil Procedure^[1] for the purpose of compelling the attendance of witnesses and the production of evidence, and for the purpose of examining witnesses in any inquiry or appeal, which they may be empowered to make or entertain under the provisions of this Act. 14 of 1882.

Proceedings not to be invalidated by irregularities.

30. No proceeding under this Act shall be defeated or invalidated by reason of any defect or omission in the publication or service of any notification, notice or order, unless material injury is done to any person by such defect or omission.

Local Government may empower any person to act for the Collector.

31. The Local Government may specially empower any person to do all such acts, to discharge all such functions, and to exercise all such powers as may be done, discharged or exercised by a Collector under this Act; and on any person being so specially empowered, such person may do all such acts, discharge all such functions, and exercise all such powers, and such person shall be deemed to be the Collector for the purposes of the scheme, in respect of which he is so specially empowered.

The Collector may delegate his authority to another.

32. (1) The Collector may, with the sanction of the Commissioner of the Division, delegate to any Deputy or Assistant Collector, the performance of any acts or the discharge of any functions which the said Collector may perform or discharge under this Act.

(2) Upon such delegation, such Deputy Collector or other officer may do such acts, discharge such functions and exercise such powers for the performance of the same, as the Collector may exercise under this Act:

[¹] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code—*see* s. 158 thereof, in the General Acts, 1904-09, Ed. 1909, p. 184.

(Secs. 33-35.)

Provided that all acts done, functions discharged and powers exercised by such officer, shall be done, discharged, or exercised subject to the control and supervision of the Collector.

33. Notwithstanding anything hereinbefore contained, all the proceedings of the Commissioners and of the Collector under this Act shall be subject to the general control and supervision of the Commissioner of the Division, or, when the tract or local area affected comprises land situated in more than one Division, of such Commissioner as the Local Government may direct.

Proceedings of the commissioners and the collector subject to control of Commissioner of Division.

34. If at any time the Local Government is satisfied that the cost of any scheme of works, including the cost of maintenance, has been erroneously estimated, it may direct that the scheme be no further proceeded with, until the same has been revised.

Local Government may direct cessation of work and revision of the scheme.

CHAPTER II.

RULES.

35. (1) It shall be lawful for the Local Government, from time to time, to make, and, when made, to alter or repeal, rules not inconsistent with this Act, for the purposes of—

Power of Local Government to make rules and to cancel them.

- (a) prescribing the forms of accounts, surveys, plans, estimates, periodical statements and reports;
- (b) regulating the conduct of business at the meetings of the Commissioners;
- (c) regulating the instalments by which and the mode in which sums payable under this Act shall be paid;
- (d) regulating the carrying out and maintenance of works, when one or more local authorities are concerned;
- (e) ascertaining the capitalized value of the estimated cost of maintenance of drainage works;
- (f) providing for professional supervision over the preparation of surveys, plans and estimates, and the execution and maintenance of drainage works;
- (g) allotting the duties of the Collector under this Act among Collectors of different districts as may be convenient; and
- (h) generally carrying out the purposes of this Act.

(2) The Local Government shall, before making, altering or repealing rules under this section, publish a draft of the proposed rules and alterations and a notification of the proposed repeals in three consecutive

(Secs. 27-32.)

Penalty for constructing weirs, etc., obstructing public drainage.

27. (1) Any person who, without lawful authority, erects, or causes to be erected, any weir or other obstruction in any outlet or water-channel, or cultivates the bed of a water-channel, so as to obstruct natural drainage, shall, upon conviction before a Magistrate, be liable to a penalty not exceeding two hundred rupees for every such offence.

(2) It shall be in the discretion of such Magistrate to direct any such offender to remove and pay for the entire cost of the removal of any such obstruction.

Lands taken and works constructed under Act to be under District Board.

28. All lands which are taken under the provisions of this Act for the purpose of the construction of works therein or thereon, and all works constructed under the provisions of this Act, as well as all outlets, water-channels, embankments and dams so constructed, cleared, altered, enlarged, excavated or cut, shall be under the control and administration of the District Board.

Powers of the Commissioners, etc., in taking evidence.

29. The Commissioners, the Collector, and the Commissioner of the Division shall have all such powers as are conferred on Civil Courts by the Code of Civil Procedure^[1] for the purpose of compelling the attendance of witnesses and the production of evidence, and for the purpose of examining witnesses in any inquiry or appeal, which they may be empowered to make or entertain under the provisions of this Act. 14 of 1882.

Proceedings not to be invalidated by irregularities.

30. No proceeding under this Act shall be defeated or invalidated by reason of any defect or omission in the publication or service of any notification, notice or order, unless material injury is done to any person by such defect or omission.

Local Government may empower any person to act for the Collector.

31. The Local Government may specially empower any person to do all such acts, to discharge all such functions, and to exercise all such powers as may be done, discharged or exercised by a Collector under this Act; and on any person being so specially empowered, such person may do all such acts, discharge all such functions, and exercise all such powers, and such person shall be deemed to be the Collector for the purposes of the scheme, in respect of which he is so specially empowered.

The Collector may delegate his authority to another.

32. (1) The Collector may, with the sanction of the Commissioner of the Division, delegate to any Deputy or Assistant Collector, the performance of any acts or the discharge of any functions which the said Collector may perform or discharge under this Act.

(2) Upon such delegation, such Deputy Collector or other officer may do such acts, discharge such functions and exercise such powers for the performance of the same, as the Collector may exercise under this Act:

[¹] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code—see s. 158 thereof, in the General Acts, 1904-09, Ed. 1909, p. 184.

(Secs. 33-35.)

Provided that all acts done, functions discharged and powers exercised by such officer, shall be done, discharged, or exercised subject to the control and supervision of the Collector.

33. Notwithstanding anything hereinbefore contained, all the proceedings of the Commissioners and of the Collector under this Act shall be subject to the general control and supervision of the Commissioner of the Division, or, when the tract or local area affected comprises land situated in more than one Division, of such Commissioner as the Local Government may direct.

Proceedings of the commissioners and the collector subject to control of Commissioner of Division.

34. If at any time the Local Government is satisfied that the cost of any scheme of works, including the cost of maintenance, has been erroneously estimated, it may direct that the scheme be no further proceeded with, until the same has been revised.

Local Government may direct cessation of work and revision of the scheme.

CHAPTER II.

RULES.

35. (1) It shall be lawful for the Local Government, from time to time, to make, and, when made, to alter or repeal, rules not inconsistent with this Act, for the purposes of—

Power of Local Government to make rules and to cancel them.

- (a) prescribing the forms of accounts, surveys, plans, estimates, periodical statements and reports;
- (b) regulating the conduct of business at the meetings of the Commissioners;
- (c) regulating the instalments by which and the mode in which sums payable under this Act shall be paid;
- (d) regulating the carrying out and maintenance of works, when one or more local authorities are concerned;
- (e) ascertaining the capitalized value of the estimated cost of maintenance of drainage works;
- (f) providing for professional supervision over the preparation of surveys, plans and estimates, and the execution and maintenance of drainage works;
- (g) allotting the duties of the Collector under this Act among Collectors of different districts as may be convenient; and
- (h) generally carrying out the purposes of this Act.

(2) The Local Government shall, before making, altering or repealing rules under this section, publish a draft of the proposed rules and alterations and a notification of the proposed repeals in three consecutive

numbers of the Calcutta Gazette, and shall specify a date not less than one month from the date of publication, at or after which such draft and notification will be taken into consideration.

(3) The Local Government shall receive and consider any objection or suggestion which may be made by any person with respect to such draft and notification before the date so specified.

(4) Every rule so made or altered, and every repeal of any such rule under this section shall be thereafter published in the Calcutta Gazette.

SCHEDULE.

(See section 7.)

BENGAL SANITARY DRAINAGE ACT, 1895.

To all whom it may concern.

TAKE notice, that with the object of improving the sanitary condition of the country, it is proposed to restore or improve the drainage in the thanas of.....district.....

Copies of the plans and estimates of the work proposed, which will affect (so many) villages, are now in the office of.....and may be inspected by any persons interested at any time between 11 A.M. and 5 P.M., Sundays and holidays excepted, up to and including the.....day of.....

It is estimated that, if the said drainage scheme is carried out, a rate will be payable by the residents of the villages affected which will be equivalent to.....on every rupee now paid as Road Cess for a period of thirty years from the date of the completion of the works, unless the District Board shall decide to collect the amount within a shorter period.

Any person objecting to the execution of the said works shall submit a petition in writing, duly signed, to the Collector of.....on or before the.....day of.....

Any person who does not object in the manner and within the time mentioned, shall be held to have assented to the execution of the works.

Collector.

THE PROTECTION OF MUHAMMADAN PILGRIMS ACT, 1896.)

SECTION.

1. Short title, extent and commencement.
2. Definitions.
3. Grant of licenses to act as pilgrim brokers.
4. Licenses what to specify.
5. Penalty for acting as pilgrim broker without a license, or for lending license
6. Penalty for misbehaviour of licensed pilgrim broker.
7. Power to suspend and cancel licenses.
8. Appointment
9. Power to
10. Penalty for
11. Informant
12. Penalty
13. Penalty for issuing tickets in excess.
14. Passage-tickets to be numbered consecutively and to have price marked.
15. Certain provisions of Native Passenger Ships Act, 1887, to apply to offences and fines under this Act.
16. Certain penalties to be enforced only at the instance of the Commissioner of Police.
17. Construction of references to the Native Passenger Ships Act, 1887.

BENGAL ACT 1 OF 1896.

(THE PROTECTION OF MUHAMMADAN PILGRIMS ACT, 1896.)[*]

(10th June, 1896.)

An Act to provide for the protection of Muhammadan Pilgrims.

Whereas it is expedient to provide for the protection of Muhammadan Pilgrims; Short title, extent and commencement.

It is hereby enacted as follows:—

1. (1) This Act may be called the Protection of Muhammadan Pilgrims Act, 1896;

(2) It extends in the first instance to Calcutta only; but the Local Government may, by notification in the Calcutta Gazette, extend it to any other place in the Province of Bengal;[*] and

(3) It shall come into force—

(a) in Calcutta, from the date on which it may be published in the Calcutta Gazette with the assent of the Governor General, and

(b) in any place to which it may be extended by notification under sub-section (2) of this section, from the date specified in this behalf in such notification.

2. In this Act, unless there be something repugnant in the subject or context,— Definitions.

(a) “pilgrim” means a Muhammadan who is proceeding to or returning from the *Hedjaz*;

(b) “pilgrim broker” means a person who buys and resells, or sells on commissions, or takes any reward for the purchase or sale of passage tickets, whether by sea or railway, for pilgrims;

[*] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1896, Pt. IV, p. 3; for Report of Select Committee, see *ibid.*, p. 5; and for Proceedings in Council, see *ibid.*, 1896, Supplement, pp. 406, 464, 695 and 737.

The application of the Act is barred in—

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I, p. 864; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 777.

[*] This now includes the present Province of Bihar and Orissa except the district of Sambalpur.

(Secs. 3-6.)

- (c) "agent" includes a person who has chartered a ship for the conveyance of pilgrims;
- (d) "Calcutta" means the area for the time being included in "Calcutta" as defined in the Calcutta Municipal Consolidation Act, 1888,^[1] and includes the Port of Calcutta; and
- (e) "Commissioner of Police" means—
 - (i) as regards Calcutta, the Commissioner of Police for that town, and
 - (ii) as regards any place to which this Act may hereafter be extended, any person whom the Local Government may appoint, by name or by virtue of his office, to perform in such place the functions of the Commissioner of Police under this Act.

Grant of licenses to act as pilgrim brokers.

3. (1) The Commissioner of Police^[2] shall from time to time grant licenses empowering persons to act as pilgrim brokers.

(2) The Local Government may, from time to time, make rules^[3] to regulate the grant of such licenses and to prescribe the conditions to be embodied therein.

(3) All such rules shall be published in the Calcutta Gazette.

4. Every such license shall specify—

- (a) the name and address of the licensee;
- (b) the period for which the license is to be in force; and
- (c) the conditions subject to which the license is granted.

Licenses what to specify.

Penalty for acting as pilgrim broker without a license, or for lending license.

5. Any person who, without a license granted under section 3, acts as a pilgrim broker, or who lends to another person a license granted to himself under that section, shall, on conviction, be liable to fine which may extend to two hundred rupees for each offence.

6. If any licensed pilgrim broker—

- (a) commits a breach of any of the conditions of his license; or

Penalty for misbehaviour of licensed pilgrim broker.

^[1] Ben. Act 2 of 1888 has been repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), and this reference should now be construed as a reference to s. 3 (7) of the latter Act,—see the Bengal General Clauses Act, 1899 (1 of 1899), s. 10, *post*, p. 139.

^[2] For power to appoint a person to perform the functions of the Commissioner of Police, see s. 2 (ii), *supra*.

^[3] For a reference to rules made under section 3 (2) for Bihar and Orissa as constituted on the 31st March, 1912, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 7-8.)

- (b) purchases for or sells to any pilgrim a passage-ticket by any ship to which the Native Passenger Ships Act, 1887,^[1] applies, at any time before notice has been given by the master, owner or agent of the ship under section 7 of that Act,^[2] of the time at which it is proposed that the ship shall sail; or
 - (c) purchases for or sells to any pilgrim a passage-ticket by any ship unless the proposed time of sailing is printed on such ticket; or
 - (d) charges any pilgrim a sum in excess of the cost price of any passage-ticket, or of any provisions or other articles, purchased for him, or receives from him any fee or commission on account of any such ticket; or
 - (e) receives from the master, owner or agent of any ship, or from any railway-servant, any fee or commission in respect of the sale of any passage-ticket for a pilgrim, exceeding five per centum of the price of such ticket; or
 - (f) purchases for any pilgrim a passage-ticket on which there is not printed or stamped the price charged for the passage according to the class of accommodation secured; or
 - (g) by fraud or false representation, or by any false pretence whatever, induces any person to purchase a pilgrim's passage-ticket,
- he shall,³ on conviction, be liable to fine which may extend to two hundred rupees for each offence.

7. The Commissioner of Police^[3] may—

- (a) suspend the license of any pilgrim broker pending any inquiry into any accusation against him of misconduct for which, if proved, he would be liable to fine under section 6, and
- (b) cancel the license granted to any pilgrim broker who is convicted of any offence under this Act or of any other criminal offence.

8. (1) The Local Government may, from time to time, appoint any persons, being Muhammadans, to be Protectors of Pilgrims for Calcutta or for any place to which this Act may hereafter be extended.

^[1] Now read the Pilgrim Ships Act, 1895—see s. 17, post, p. 77.

^[2] Now read section 8 of the Pilgrim Ships Act, 1895—see s. 17, post, p. 77.

^[3] For power to appoint a person to perform the functions of the Commissioner of Police, see s. 2 (ii), ante, p. 74.

(Secs. 9-14.)

(2) Every Protector of Pilgrims shall, for the purposes of this Act, be subordinate to the Commissioner of Police,^[1] and shall aid the Commissioner in giving effect to the provisions of this Act, shall advise and generally assist pilgrims during their stay in the place for which the Protector is appointed, and shall exercise supervision over the proceedings of all licensed pilgrim brokers therein.

Power to enter ships conveying pilgrims.

9. Any Protector of Pilgrims, or any person authorized by the Commissioner of Police in this behalf, shall be at liberty at all times to enter and inspect any ship advertised or offered to convey pilgrims from the Port of Calcutta or any place to which this Act may hereafter be extended.

Penalty for not facilitating inspection.

10. If the master or any officer of any such ship does not afford every reasonable facility for such inspection, he shall, on conviction, be liable to fine which may extend to two hundred rupees for each offence.

Information to be supplied by master, owner or agent of ship conveying pilgrims.

11. It shall be incumbent on the master, owner or agent of every such ship to supply the Protector of Pilgrims, on demand, with full particulars as to the class, tonnage and age of the ship, the number of passage-tickets of each class to be issued for pilgrims, the price of each such ticket, the accommodation to be provided for pilgrims, the latest date of sailing, the ports, if any, to be touched at, and the probable date of the arrival of the ship at Jeddah.

Penalty for refusal or omission to give such information or for giving false information.

12. Whoever, as master, owner or agent of any such ship, refuses or without lawful excuse omits, to give on demand any such information, or furnishes any such information which he believes to be false, shall, on conviction, be liable to fine which may extend to two hundred rupees for each offence.

Penalty for issuing tickets in excess.

13. Whoever, as master, owner or agent of any such ship, issues any passage-ticket for a pilgrim in excess of the number allowed by Certificate A granted under the Native Passenger Ships Act, 1887,^[2] 10. of 1887, shall, for every passage-ticket so issued, be liable, on conviction, to fine which may extend to four times the original cost price of such ticket.

Passage-tickets to be numbered consecutively and to have price marked.

14. (1) All passage-tickets for pilgrims shall be numbered consecutively according to the order of issue, and shall have printed or stamped thereon the price charged for the passage.

(2) Whoever, as master, owner or agent of any ship, issues two or more of such tickets bearing the same number, or issues any such ticket on which the price charged for the passage is not printed or stamped, shall, on conviction, be liable to fine which may extend to two hundred rupees for each offence.

[1] For power to appoint a person to perform the functions of the Commissioner of Police, see s. 2 (ii), *ante*, p. 74.

[2] Now read Certificate A granted under the Pilgrim Ships Act, 1895—see s. 17, *post*, p. 77.

(Secs. 15-17.)

- 10 of 1887. 15. Sections 46, 47 and 49 of the Native Passenger Ships Act, 1887,^[1] shall apply, throughout the territories under the administration of the Lieutenant-Governor of Bengal^[2] to all offences punishable and fines leviable under this Act.
- 14 of 1895. 16. The penalties to which masters, owners and agents of ships are made liable by this Act shall be enforced only on information laid at the instance of the Commissioner of Police.^[3]
- 10 of 1887. 17. From the day on which the Pilgrim Ships Act, 1895,^[4] comes into force, the references in this Act to the Native Passenger Ships Act, 1887, shall be read as if made to the corresponding provisions of the said Pilgrim Ships Act.

Certain provisions of Native Passenger Ships Act, 1887, to apply to offences and fines under this Act.

Certain penalties to be enforced only at the instance of the Commissioner of Police.

Construction of references to the Native Passenger Ships Act, 1887.

[1] Now read ss. 51, 52, 54 of the Pilgrim Ships Act, 1895—see s. 17, *post*, p. 77.

[2] This includes the present Presidency of Fort William in Bengal and other territory.

[3] For power to appoint a person to perform the functions of the Commissioner of Police, see s. 2 (ii), *ante*, p. 74.

[4] The Pilgrim Ships Act, 1895, came into force on the 6th October, 1906—see Gazette of India, 1896, Pt. I, p. 800. The Act is printed in the General Acts, 1887-97, Ed. 1909, p. 497.

BENGAL ACT 2 OF 1896.

[THE BENGAL MUNICIPAL (AMENDMENT) ACT, 1896]

CONTENTS.

SECTION

1. (*Repealed.*)
2. Meaning of "section."
3. Amendment of section 15, Bengal Act 3 of 1884
4. Amendment of section 37L.
5. Amendment of section 39.
6. Amendment of section 42.
7. Amendment of section 69.
8. Amendment of section 70.
9. Amendment of sections 131, 141A, 142 and 147A.
10. New section 141B.
11. New section 147B.
12. Amendment of section 238.
13. Amendment of section 279.
14. Further amendment of section 279.
15. Amendment of section 321.
16. Amendment of section 322.
17. Amendment of section 350.
18. Amendment of section 351A.
19. (*Repealed.*)

BENGAL ACT 2 OF 1896.

[THE BENGAL MUNICIPAL (AMENDMENT) ACT, 1896.] [1]

(28th October, 1896.)

**An Act to further amend the Bengal Municipal
Act, 1884.**[2]

Whereas it is expedient to further amend the Bengal Municipal Act, 1884[2];

It is hereby enacted as follows:—

1. (Commencement). *Rep.^d by the Amending Act, 1903 (1 of 1903).*

2. The word “section,” as used in sections 3 to 18, both inclusive, of this Act, means a section of the said Bengal Municipal Act, 1884[2] as amended by Bengal Act 4 of 1894.[2] Meaning of
“section.”

3. (1) For clauses (1), (2) and (3) of the first proviso to section 15, the following shall be substituted, namely:— Amendment
of section 15,
Bengal Act
3 of 1884.

(i), (ii), (iii) [Printed in Vol. II of this Code.]

(2) In the definition of “rates” in the said section, the word “means” shall be substituted for the words “shall be deemed to include.”

(3) To the said section the following shall be added, namely:—

Explanation. [Printed in Vol. II of this Code.]

4. For section 37L the following shall be substituted, namely:—

37L. [Printed in Vol. II of this Code.] Amendment
of section]
37L. 3]

5. To section 39 the following shall be added, namely:—

[Printed in Vol. II of this Code.] Amendment]
of section 39.

6. (1) After the words “or Vice-Chairman,” in the first paragraph of section 42, the words “or under section 39 by persons signing a requisition” shall be inserted. Amendment
of section 42.

[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I,—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1896, Part IV, p. 11; for Report of Select Committee, see *ibid.*, p. 41; and for Proceedings in Council, see *ibid.*, 1896, Supplement, pp. 573, 695, 734, 1260, 1304, 1399, 1492, 1556 and 1614.

LOCAL EXTENT.—The local extent of this Act is the same as that of Ben. Act 3 of 1884, printed in Vol. II of this Code.

The application of the Act is barred in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I, p. 864

[2] Printed in Vol. II of this Code.

[3] Printed *ante*, p. 34.

(Secs. 16-19.)

16. For section 322, sub-section (3), the following shall be substituted, Amendment of section 322.
namely:—

(3) [Printed in Vol. II of this Code.]

17. After clause (a) of section 350 the following shall be inserted, Amendment of section 350.
namely:—

(aa) [Printed in Vol. II of this Code.]

18. For clause (f) of section 351A the following shall be substituted, Amendment of section 351A.
namely:—

(f) [Printed in Vol. II of this Code.]

19. (*Repeal of portions of Bengal Act 4 of 1894. Rep. by the Amending Act, 1903 (1 of 1903).*)

(Secs. 7-15.)

(2) For the words "Chairman or Vice-Chairman," in the last paragraph of section 42, the word "President" shall be substituted.

Amendment
of section 69.

7. For section 69 the following shall be substituted, namely:—

69, 69A, 69B. [Printed in Vol. II of this Code.]

Amendment
of section 70.

8. (1) For the words "the last preceding section," in section 70, the words and figures "section 69, sub-section (1)" shall be substituted.

(2) To the said section 70 the following shall be added, namely:—

[Printed in Vol. II of this Code.]

Amendment
of sections
131, 141A, 142
and 147A.

9. (1) For the words "or habitually used" and the words "and habitually used," in section 131 and section 142, the words "or is used in the ordinary course of business" and the words "and is used in the ordinary course of business" shall respectively be substituted.

(2) For the words "habitually used," in section 147A, the words "used in the ordinary course of business" shall be substituted.

(3) To section 147A the following shall be added, namely:—

[Printed in Vol. II of this Code.]

(4) (*Repeal of the words "or cantonment" in sections 141A and 147A.*) *Rep. by the Amending Act, 1903 (1 of 1903).*

New section
141B.

10. After section 141A the following shall be inserted, namely:—

141B. [Printed in Vol. II of this Code.]

New section
147B.

11. After the said section 147A the following shall be inserted, namely:—

147B. [Printed in Vol. II of this Code.]

Amendment
of section
238.

12. In section 238, sub-section (1), the words "or without waiting for the orders of the Commissioners for six weeks from the date of his giving notice in writing under section 237" shall be inserted after the words "as aforesaid."

Amendment
of section
279.

13. (1) After sub-section (1) of section 279, the following shall be inserted, namely:—

(1a) [Printed in Vol. II of this Code.]

(2) In sub-section (2) of the said section, the words "or amounts" shall be inserted after the word "amount," in the first place in which that word occurs.

Further
amendment
of section
279.

14. After clause (b) of the first proviso to section 279, the following shall be inserted, namely:—

[Printed in Vol. II of this Code.]

Amendment
of section
321.

15. In section 321, after the words "dwelling-houses" the words "or privies" shall be inserted.

(THE ESTATES PARTITION ACT, 1897).

PRELIMINARY.

1. Short title, extent and commencement.
2. Repeal and savings.
3. Definitions.

4. Who entitled to claim partition.
5. Partition according to interest.
6. Separation of land held in common between the proprietors of two or more estates, when the estates are not under partition.
7. Partition of lands under Act where a partition has been made by private arrangement.
8. Tenants for life not entitled to claim partition.

[illegible]

17. Application for partition how to be made.
18. Application to be signed and to contain certain particulars.
19. Application to be accompanied by copy of rent-roll and by specification of previous measurements and record-of-rights.
20. Procedure if application is not in order.
21. Notification and notice of application.
22. Power to reject application on receipt of objection.
23. Procedure when objection raises any question of right or title or of extent of interest.

SECTION.

59. Duties of Deputy Collector when partition has been approved by Collector or when Collector makes a new partition.
60. Proprietor not appearing on fixed day not entitled to make objection.
61. Submission of the papers to the Commissioner after approval of the partition by the Collector.

CHAPTER IX.

GENERAL PRINCIPLES FOR MAKING PARTITIONS.

Lands held in common tenancy.

62. Separate estates to be made compact.
63. Circumstances to be considered in making partitions.
64. Rights when dwelling-house belonging to one proprietor is situated on land to be allotted to another proprietor.
65. Power to apply section 64 to gardens, etc.
66. Rent for land fixed under section 64 or 65 deemed to be the assets of the land.
67. Redemption of rent fixed under section 64.
68. Amount payable in redemption of rent.
69. Such amount when payable.
70. Notice of payment to be given, and land to be held rent-free.
71. Collector to register the rent-free tenure.
72. Drawing of lots for equal shares.
73. Order and method of drawing lots when aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares.
74. Deputy Collector may require proprietors to attend or appoint agent for the purpose of drawing lots.
75. In default, Deputy Collector may appoint a person to draw lots.

Lands held in severalty.

76. Partition according to separate possession, and apportionment of land-revenue.
77. Lands of which each proprietor is in possession to be allotted to him.
78. Collector may cause transfer of lands agreed to by parties

Lands held in common tenancy and Lands held in severalty.

79. Places of worship, etc.
80. Tanks, wells, water-courses, reservoirs and embankments.
81. Splitting up of tenure or holding, and apportionment of rent thereof.
82. Land held rent-free not to be divided except with consent of recorded proprietors.
83. Land held at fixed rent on permanent intermediate tenure.
84. Land held in common between the proprietors of two or more estates how to be dealt with when one estate is under partition.
85. When proprietors of other estates may be required to pay a portion of the costs of making a division under section 84.
86. Allotment made under section 84 to be submitted to the Collector.
87. Land so allotted how to be dealt with.
88. Procedure when dispute or doubt exists as to whether any land forms part of a parent estate.
89. Procedure when partition completed in pursuance of order under section 88, clause (b), and proprietor of an estate dispossessed of any land by decree.

CHAPTER X.

PROCEDURE BEFORE THE COMMISSIONER UP TO THE COMPLETION OF A PARTITION.

90. Procedure if proceedings require amendment or if appeal or objection presented
91. Procedure in other cases.
92. Commissioner may return the papers for amendment or inquiry as often as he thinks fit.

SECTION.

93. Procedure by Collector on receipt of Commissioner's order, confirming, or Board's order sanctioning, a partition.
94. Procedure as to giving possession of separate estates.
95. Each separate estate to be borne on the revenue-roll and General Register as separately liable for the land-revenue assessed upon it.
96. Boundary marks.

CHAPTER XI.

MISCELLANEOUS.

97. Powers of Deputy Collector as to production of documents and attendance of witnesses.
98. General power to refer to arbitration.
99. Saving of tenures, leases and incumbrances.
100. Uniting of estates.
101. If separate estate falls into arrear, Collector to inquire into cause and report to Commissioner.
102. Power of Lieutenant-Governor to order a new allotment of the land-revenue.
103. Power to require proprietors of under-assessed estates to make refund to proprietors of over-assessed estates.
104. Publication of notifications.
105. Service of notices.
106. Mistakes and irregularities not to vitiate proceedings.
107. Fine in case of non-compliance with requisition.
108. Fees, etc., to be recoverable as public demands.
109. Powers and functions of Deputy Collector may be exercised by Collector.
110. Power to vest Collector or Deputy Collector with settlement powers.
111. Appeals to the Collector, and admission by him of objections.
112. Appeals to the Commissioner, and admission by him of objections.
113. Appeals to the Board.
114. Limitation of appeals; revision by Board; further appeal to Board.
115. Stay of proceedings pending appeal or revision.
116. Revision of proceedings connected with giving possession.
117. Orders as to costs on appeal.
118. Powers of officers exercising jurisdiction under this Act with regard to false evidence or forgery.
119. Certain orders under this Act not liable to be contested or set aside by civil suit.
120. Board to be guided by orders or instructions of Lieutenant-Governor.
121. Power of Board to make rules.

BENGAL ACT 5 OF 1897.

(THE ESTATES PARTITION ACT, 1897.)[¹]

(8th December, 1897.)

An Act to amend the law relating to the Partition of Estates.

Whereas it is expedient to amend the law relating to the partition of estates;

And whereas the sanction of the Governor General of India has been obtained, under section 5[²] of the Indian Councils Act, 1892, to the provisions contained in section 12 of this Act amending the Code of Civil Procedure;[³]

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Estates Partition Act 1897;

Short title,
extent and
commence-
ment.

[¹] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1896, Part IV, p. 34; for Preliminary Report of Select Committee, see *ibid*, 1897, Pt. IV, p. 41; and for Proceedings in Council, see *ibid*, 1896, Supplement, pp. 695, 741, 2900; *ibid*, 1897, Supplement, pp. 137, 160, 1687, 3364 and 4023. The final Report of Select Committee was not published in the Calcutta Gazette.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal—see s. 1, but its application is barred in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I, p. 864.

It is in force in the Sonthal Parganas—see Vol. IV, Part III.

ANNOTATED REPRINT.—For an annotated reprint of this Act, see the Bihar and Orissa Batwara Manual, 1917, p. 9.

OTHER ENACTMENTS.—For a general Act amending the Law in British India as to partition, see the Partition Act, 1893 (4 of 1893), in the General Acts, 1887-97, Ed. 1909, p. 357. That Act does not affect any local law providing for the partition of immovable property paying revenue to the Government—see s. 1 (4) thereof.

As to Commissions to make partition under the Code of Civil Procedure (Act 5 of 1908), see rules 13 and 14 in Order XXVI in Schedule I to that Code, in the General Acts, 1904-09, Ed. 1909, p. 291. That Code does not affect any local law providing for the partition of immovable property—see s. 4 *ibid*, p. 143.

For power to make partition at settlement, see the Bengal Land-revenue Settlement Regulation, 1822 (7 of 1822), s. 12, in Vol. I of this Code.

Joint proprietors who are dissatisfied with an offer of settlement are entitled to claim partition—see the Bengal Decennial Settlement Regulation, 1793 (8 of 1793), s. 26, in Vol. I of this Code.

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ted estates, see the Bengal Leases and in Vol. I of this Code.

Tenancy Act, 1885—printed in Vol. I

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to India, 1913, Vol. II, p. 804.
cted by the Code of Civil Procedure,

1908 (5 of 1908), printed in the General Acts, 1904-09, Ed. 1909, p. 141.

(Secs. 2-3.)

(2) It extends to the territories for the time being under the administration of the Lieutenant-Governor of Bengal;[¹] and

(3) It shall come into force on the day[²] on which it is first published in the Calcutta Gazette after having received the assent of the Governor General.

Repeal and savings.

2. (1) On and from that day the Estates Partition Act, 1876, shall be repealed. But— Ben. Act 8 of 1876.

(a) this repeal shall not affect the previous operation of said Act, or anything duly done or suffered thereunder, or any fine incurred thereunder;

(b) where in any pending case an order under section 63 of the said Act was made before the said day, the subsequent proceedings shall, unless all the proprietors request otherwise, be carried on under the said Act, as if this Act had not been passed;

(c) subject to clause (b) of this section, all pending proceedings which have been commenced under the said Estates Partition Act, 1876, before the said day, shall be carried on under this Act, save that, where in any case the Collector has before that day directed that an application for partition be admitted, section 11 of the said Estates Partition Act, 1876, shall apply instead of clauses (a) and (b) of section 11 of this Act.

(2) Any enactment or document referring to the said Estates Partition Act, 1876, or to any enactment repealed thereby, shall, so far as may be, and subject to sub-section (1) of this section, be construed to refer to this Act or to the corresponding portion thereof.

Definitions.

3. In this Act, unless there be something repugnant in the subject or context,—

(i) [³] “Board” means the Board of Revenue for the territories for the time being under the administration of the Lieutenant-Governor;

(ii) “Collector” means the Collector of the district on the revenue-roll of which an estate which is under partition, or which it is proposed to bring under partition is borne, and includes—

(a) any officer whom the Board[³] generally vests (as it is hereby empowered to do) with the powers of a Collector under this Act, and to whom the Collector has, with the sanction of the Commissioner, delegated (as he is hereby empowered to

[¹] This includes the present Province of Bihar and Orissa.

[²] i.e., the 8th December, 1897.

[³] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), *post*. p. 385.

(Sec. 3.)

do) any of his functions in respect of the partition of an estate, and

(b) any officer whom the Board^[1] specially vests (as it is hereby empowered to do) with the powers of a Collector for the purposes of any partition under this Act;

(iii) "Commissioner" means the Commissioner of Revenue to whom the Collector engaged in making a partition is subordinate;

(iv) "Deputy Collector" includes any Assistant Collector, Deputy Collector or Sub-Deputy Collector whom the Collector may appoint (as he is hereby empowered to do) to effect a partition under this Act, or to conduct any of the proceedings connected with such partition;

(v) "proprietor" includes every person who is in possession of any estate under partition or any portion of such an estate, or of any interest in any such estate or in any part of such an estate, as owner thereof, whether or not such person is a recorded proprietor of the estate;

(vi) "recorded proprietor" means a person whose name is registered on the Collector's General Register of revenue-paying land as proprietor of an estate, or of any share or interest therein;

(vii) the words "tenure," "permanent tenure," "holding" and "tenant" have the meanings attached to them in the Bengal Tenancy Act, 1885;^[2]

(viii) "applicant" means any person who has applied to the Collector under the provisions of this Act for the separation from a parent estate of land representing the interest of such person in such estate, and for the assignment to him of such land as a separate estate liable for a demand of land-revenue distinct from that for which the parent estate is liable;

(ix) "estate" means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land-revenue;

(x) "joint undivided estate" means an estate of which two or more persons are proprietors;

(xi) "parent estate" means an estate for the partition of which proceedings are in progress under this Act, or of which the partition has been effected under this Act;

(xii) "separate estate" means any distinct estate which is formed by the partition of a parent estate under this Act, or for the formation of which, by such partition, proceedings are in progress under this Act;

(xiii) "land" does not include houses or other buildings standing thereon;

[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), *post.* p. 385.

[2] Printed in Vol. I of this Code.

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(a) this repeal shall not affect the previous operation of said Act, or anything duly done or suffered thereunder, or any fine incurred thereunder;

(b) where in any pending case an order under section 63 of the said Act was made before the said day, the subsequent proceedings shall, unless all the proprietors request otherwise, be carried on under the said Act, as if this Act had not been passed;

(c) subject to clause (b) of this section, all pending proceedings which have been commenced under the said Estates Partition Act, 1876, before the said day, shall be carried on under this Act, save that, where in any case the Collector has before that day directed that an application for partition be admitted, section 11 of the said Estates Partition Act, 1876, shall apply instead of clauses (a) and (b) of section 11 of this Act.

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(a) any officer whom the Board[³] generally vests (as it is hereby empowered to do) with the powers of a Collector under this Act, and to whom the Collector has, with the sanction of the Commissioner, delegated (as he is hereby empowered to

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(b) any officer whom the Board^[1] specially vests (as it is hereby empowered to do) with the powers of a Collector for the purposes of any partition under this Act;

(iii) "Commissioner" means the Commissioner of Revenue to whom the Collector engaged in making a partition is subordinate;

(iv) "Deputy Collector" includes any Assistant Collector, Deputy Collector or Sub-Deputy Collector whom the Collector may appoint (as he is hereby empowered to do) to effect a partition under this Act, or to conduct any of the proceedings connected with such partition;

(v) "proprietor" includes every person who is in possession of any estate under partition or any portion of such an estate, or of any interest in any such estate or in any part of such an estate, as owner thereof, whether or not such person is a recorded proprietor of the estate;

(vi) "recorded proprietor" means a person whose name is registered on the Collector's General Register of revenue-paying land as proprietor of an estate, or of any share or interest therein;

(vii) the words "tenure," "permanent tenure," "holding" and "tenant" have the meanings attached to them in the Bengal Tenancy Act, 1885;^[2]

(viii) "applicant" means any person who has applied to the Collector under the provisions of this Act for the separation from a parent estate of land representing the interest of such person in such estate, and for the assignment to him of such land as a separate estate liable for a demand of land-revenue distinct from that for which the parent estate is liable;

(ix) "estate" means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land-revenue;

(x) "joint undivided estate" means an estate of which two or more persons are proprietors;

(xi) "parent estate" means an estate for the partition of which proceedings are in progress under this Act, or of which the partition has been effected under this Act;

(xii) "separate estate" means any distinct estate which is formed by the partition of a parent estate under this Act, or for the formation of which, by such partition, proceedings are in progress under this Act;

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[2] Printed in Vol. I of this Code.

(Sec. 3.)

(xiv) "rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant; and "rent payable in kind" means, in money, the amount which would be determined as the rent if a commutation were made under section 40, sub-section (4), of the Bengal Tenancy Act, 1885;[¹]

(xv) "assets," when used with reference to land, means—

- (a) in the case of land held by cultivating *raiyats*—the rent payable by them;
- (b) in the case of land which is occupied by a proprietor—the rent which might reasonably be expected to be payable by cultivating *raiyats* if the land were occupied by them;
- (c) in the case of land held on a permanent tenure which was created by all the proprietors of the estate and which by any law for the time being in force is protected against the purchaser at a sale for arrears of land-revenue—the rent payable by the holder of such tenure;
- (d) in the case of land held on a tenure which, although not protected as aforesaid, is admitted by all the recorded proprietors of the estate to be permanent tenure subject only to the payment of an amount of rent fixed in perpetuity, and

is of such nature that the rent thereof is not liable to be enhanced under any circumstances by the proprietors of the estate or any person deriving his title from such proprietors,—

the rent payable by the holder of such tenure whether he be known as *talukdar*, *patnidar*, or *mukarridar* or by any other designation;

- (e) in the case of unoccupied land and land forming portion of a village site—such amount, if any, as the Deputy Collector may determine with reference to all the circumstances of the case,

and includes—

- (f) all profits derived out of land by proprietors from trees, rights of pasturage, forest-rights, fisheries, and all other legal sources;

(xvi) "assets," when used with reference to an estate, means the assets of all land included in the estate;

(xvii) "Chapter" means a Chapter of this Act; and

(xviii) "section" means a section of this Act.

(Secs. 4-5.)

CHAPTER II.

RIGHT TO CLAIM PARTITION.

4. (1) Subject to the provisions of this Act, every recorded proprietor of a joint undivided estate who is in actual possession of the interest in respect of which he is so recorded shall be entitled to claim a partition of the said estate and the separation therefrom and assignment to him as a separate estate of land representing the interest of which he is in such possession. Who entitled to claim partition.

(2) Any two or more of such recorded proprietors may claim that land representing the interest of all such claimants be formed into one separate estate to be held by them as a joint undivided estate; and every provision of this Act which applies to an applicant for partition shall apply to any two or more persons making any such claim.

5. (1) If the interest of any recorded proprietor who is entitled to claim partition is an undivided share in an estate held in common tenancy, he shall be entitled to have assigned to him as his separate estate, land of which the assets shall bear the same proportion to the assets of the parent estate as his undivided share in the parent estate bears to the entire parent estate. Partition according to interest.

(2) If the interest of such recorded proprietor is the proprietary right over specific *mauzas* or lands forming part of the parent estate and held by him in severalty, he shall be entitled to have assigned to him as his separate estate the said *mauzas* or lands.

(3) If the interest of such recorded proprietor consists of an undivided share held in common tenancy in specific *mauzas* or tracts forming part of the parent estate, but not extending over the whole area of the parent estate, he shall be entitled to have assigned to him as his separate estate land, situated within such specific *mauzas* or tracts of which the assets shall bear the same proportion to the assets of such specific *mauzas* or tracts as his undivided share in such specific *mauzas* or tracts bears to the entire *mauzas* or tracts:

Provided that, if the interest of such recorded proprietor consists of such an undivided share in more than one *mauza* or tract, he shall not be entitled to have land assigned to him in every such *mauza* or tract, but the Collector may assign to him as his separate estate land situated in any one or more of the said *mauzas* or tracts, subject to the condition that the assets of such land are in proportion to the aggregate of the interests which he holds in all such *mauzas* or tracts.

(4) If the interest of such recorded proprietor consists partly of land held in severalty, and partly of an undivided share either in the whole

(Secs. 6-9.)

estate or in specific land held in common tenancy, he shall be entitled to have the portion of the common land falling by partition to his share added to the land held by him in severalty, and the estate thus formed shall be assigned to him as his separate estate, so that the assets shall bear the same proportion to the assets of the whole estate as his interest in all the land and undivided shares held by him bears to the aggregate interests of all the proprietors.

(5) If the interest of such recorded proprietor is of more than one of the kinds specified in the preceding sub-sections, land shall be assigned to him as far as possible in accordance with the principles therein laid down.

Separation of land held in common between the proprietors of two or more estates, when the estates are not under partition.

6. Whenever any land is held in common between the proprietors of two or more estates not being under partition, any one or more of such proprietors may, without applying for partition of their several estates *inter se*, apply for separation of the land held by them in common, and for the allotment of the proper shares of such land to each of their separate estates, the land-revenue of those estates remaining unaltered; and such application shall be dealt with as far as may be in accordance with the provisions of this Act.

Partition of lands under Act where a partition has been made by private arrangement.

7. (1) Where the lands of an estate have been divided by private arrangement formally made and agreed to by all the proprietors, and each proprietor has, in pursuance of such arrangement, taken possession of separate lands to be held in severalty as representing his interest in the estate, no partition of the estate shall be made under this Act except—

(a) on the joint application of all the proprietors, or

(b) in pursuance of a decree or order of a Civil Court.

(2) No objection to the partition of an estate under this Act on the ground that the lands have been divided by private arrangement shall be admitted unless it is presented before the Collector records a proceeding under section 29 declaring the estate to be under partition.

Tenants for life not entitled to aim partition.

8. Notwithstanding anything hereinbefore contained, no person having a proprietary interest in an estate for the term of his life only shall be entitled to claim partition under this Act.

CHAPTER III.

SECURITY OF THE LAND-REVENUE.

Future partitions not to relieve

9. No partition of an estate made after the commencement of this Act shall relieve any land from liability to the Government for the total

(Secs. 10-13.)

demand of land-revenue assessed upon the estate of which the land forms part, unless the partition is made as herein provided.

land from liability for total land-revenue, unless made as provided in this Act.

10. Except as otherwise provided in this Act, the amount of land-revenue assessed on each separate estate shall bear the same proportion to the whole amount of land-revenue for which the parent estate was liable as the assets of such separate estate bear to the whole assets of the parent estate.

Amount of land-revenue to be assessed on each separate estate.

11. Subject to clauses (a) and (c) of section 2 of this Act, no partition of an estate shall be made, and no application for the partition of an estate shall be admitted,—

Restrictions on partition of estate with reference to land-revenue.

- (a) if the annual amount of land-revenue for which the separate estate of the applicant would, after partition, be liable would not exceed ten rupees; or
- (b) if, after separation of the applicant's interest, the annual amount of land-revenue for which the separate estate of the remaining proprietor or proprietors would be liable would not exceed five rupees; or
- (c) if the Collector considers that for any reason any of the separate estates would be likely to prove an insufficient security for the payment of the land-revenue which would be separately charged upon it.

12. (1) Any Civil Court which has made a decree for the partition or for the separate possession of a share of an undivided estate paying land-revenue to the Government may, notwithstanding anything in section 265 of the Code of Civil Procedure,[¹] cause the decree to be executed in the manner prescribed in section 396 of that Code;[²] and if it does so the joint and several liability of the entire estate for the whole of the land-revenue chargeable upon it shall not be prejudiced or affected.

Execution of decree for partition.

(2) If any decree is sent to the Collector for execution under section 265 of the said Code,[¹] the execution thereof shall be subject to the restrictions imposed by section 11 of this Act.

13. The Collector may refuse to admit an application for the formation of land held in severalty into a separate estate, or to proceed with a partition undertaken on such an application, or to admit or proceed with

Power to refuse partition which would result in information

[¹] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to section 54 of that Code—see s. 158 thereof, in the General Acts, 1904-09, Ed. 1909, p. 184.

[²] This reference should now be taken to be made to rules 13 and 14 in Order XXVI in Schedule I to the Code of Civil Procedure, 1908—see s. 158 of that Code, in the General Acts 1904-09, Ed. 1909, p. 184.

(Secs. 14-15.)

of estates scattered so as to endanger the safety of the land-revenue.

any other application for partition, if, in consequence of the land being intermingled with that held by other proprietors, the result of the partition would be to form out of a compact estate one or more estates consisting of scattered parcels of land in such a way as, in the opinion of the Collector, to endanger the safety of the land-revenue:

Provided as follows:—

(a) a partition may be allowed in any such case if the recorded proprietors agree to such a distribution of land as would make the estates formed by the partition reasonably compact;

(b) nothing in this section shall be deemed to prohibit the partition into separate estates of any parent estate which before such partition is not compact and consists only of scattered parcels of land.

Interest alienated with special condition as to liability for land-revenue.

14. No proprietor who has alienated any portion of his interest in an estate, or in any specific land of an estate, by private contract, with the condition that the transferee shall be liable in respect of the interest acquired by him to pay a specified amount or a specified share of the land-revenue for which the estate is liable (such amount or share being other than the proportionate amount or the proportionate share for which such transferred interest if formed into a separate estate would be liable under section 10),

and no proprietor who has derived his title from any proprietor who has made any alienation as aforesaid,

shall be entitled to claim a separation under this Act of the interest which he continues to hold in the estate;

and no such transferee as aforesaid, and no person deriving his title from such a transferee, shall be entitled to claim a separation of the interest which has been so acquired:

Provided that a separation of such interests may be made if the parties concerned agree—

(a) to waive the conditions of the contract as regards the proportion of land-revenue for which the transferor and transferee or their representatives respectively are liable, and

(b) to hold the estates which may be allotted to them respectively by the partition subject to the payment of such amount of land-revenue as may be assessed upon them respectively under this Act.

Sale, for arrears of land-revenue, of an estate which is under partition.

15. If any estate has been declared to be under partition as provided in section 29, any arrears of land-revenue accruing due thereon before the date specified in the notice issued under section 94 may be realized by sale of the estate as if the same had not been declared to be under partition; and, if such sale takes place, the partition proceedings shall cease from the date thereof, but shall be revived if the sale is set aside.

(Secs. 16-18.)

16. Nothing contained in section 15 shall be deemed to affect the provisions of section 10, section 11, section 12, section 13 or section 14 of Act 11 of 1859^[1] (*an Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*), or any similar law for the time being in force, in respect to the opening of separate accounts for different shares in an estate and the protection afforded to such shares thereby:

Sale, for arrears of land-revenue, of share in an estate which is under partition.

Provided that, if any share in any estate is sold for its own arrears of land-revenue while such estate is under partition in accordance with the provisions of this Act, such share shall be sold subject to the partition proceedings, which shall proceed as if no such sale had taken place; and the purchaser of the share sold may, from the date of such sale, exercise all the rights which the proprietor whose share he has purchased might have exercised, and shall be subject to all the liabilities to which such proprietor would have been subject in respect of the partition proceedings.

CHAPTER IV.

INITIATION AND DISCONTINUANCE OF PARTITION PROCEEDINGS.

17. Every application for partition shall be made in writing to the Collector of the district on the revenue-roll of which the estate is borne, and shall be presented by the applicant or by his duly authorized agent.

Application for partition how to be made.

18. Every such application shall be signed by the applicant or by his duly authorized agent, and shall contain the following particulars, so far as they are known to or can be ascertained by him, namely:—

Application to be signed and to contain certain particulars.

- (a) the name of the parent estate;
- (b) the number under which such estate is borne on the revenue-roll, and the land-revenue demand for which it is liable;
- (c) the number under which such estate is borne on the Collector's General Register of the revenue-paying lands;
- (d) the name and address of every proprietor, whether recorded or unrecorded, of such estate, the name and address of every proprietor of any other estate holding land in common with the proprietors of the parent estate, and the name of the post office of the area within which each of the said proprietors resides;
- (e) the character and extent of the interest of which each proprietor of the parent estate is in possession;

[1] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

(Secs. 19-21.)

- (f) a specification of any land held by proprietors of the parent estate in common with proprietors of other estates and of the rights of such proprietors respectively in such land, and
 (g) such further particulars, if any, as may be prescribed by rules made by the Board.^[1]

Application to be accompanied by copy of rent-roll and by specification of previous measurements and record-of-rights.

19. (1) Every such application shall, subject to the provisions of sub-section (4) of this section, be accompanied by a copy of the rent-roll of the estate, and by a specification referring to the papers of every measurement and record-of-rights which has respectively been made of and prepared for the estate, by any officer appointed in that behalf by the Government or other competent authority and of which the person verifying the application under sub-section (2) has knowledge.

(2) The said application, rent-roll and specification shall be verified at the foot of the application, by the applicant, or by his duly authorized agent having personal knowledge of the facts stated therein in the manner following, or to the like effect:—

“I, A. B., declare that the particulars contained in this application and in the rent-roll and specification accompanying it are correct to the best of my knowledge and belief.”

(3) If the said application, rent-roll or specification contains any entry which the person making the verification knows or believes to be false, or does not believe to be true, such person shall be liable to be punished in the same manner as if he gave false evidence.

(4) If the person presenting the application is unable to produce a rent-roll as required by sub-section (1) of this section, he shall state the reason of such inability, and the name and address of the person who has in his possession the information necessary for the preparation of such rent-roll; and the Collector may, if he thinks fit, require such person to produce such rent-roll.

Procedure if application is not in order.

20. If any such application does not in the opinion of the Collector fulfil the requirements of the foregoing sections of this Chapter, he may either reject it or return it for amendment.

Specification notice applica-

21. If in the opinion of the Collector the application fulfils the said requirements, and if there appears to him to be no objection to making the partition he shall—

- (a) publish a notification of the application in the manner prescribed by section 104, and also by causing copies to be posted up at the Court of the Judge of the district and at the Court of every *Munsif* and Sub-divisional Officer within whose jurisdiction, and at every police-station within the

[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), *post*. p. 385.

(Secs. 22-24.)

jurisdiction of which, any land appertaining to the estate is known to be situated;

- (b) by such notification invite any person claiming any proprietary right in the estate, who may object to the partition, to state his objection, either in person or by duly authorized agent, on or before a day to be specified in the notification, not being less than thirty or more than sixty days from the date of the publication of the notification on the estate; and
- (c) serve a notice of the application on such of the recorded proprietors of the estate as have not joined in the application, on any unrecorded proprietor who has been named in the application, and on every proprietor of any other estate who holds land in common with the proprietors of the estate to which the application relates.

22. If any person claiming a proprietary right as aforesaid states an objection to the partition on or before the day specified in the notification published under section 21, or at any subsequent time if it shall then seem fit to the Collector to admit such objection, and the Collector, on consideration of the objection, is of opinion that there is good and sufficient reason for rejecting the application, he may reject the same, and if he does so shall record the grounds of such rejection. Power to reject application on receipt of objection.

23. If any such objection raises any question of right or title or of extent of interest as between any applicant and any other person claiming to be a proprietor of the parent estate, and if it appears to the Collector that such question has not been already determined by a Court of competent jurisdiction, the Collector may hold such inquiry into the objection as he may deem necessary, and, if he be satisfied that the applicant is in possession of the extent of the interest for the separation of which he has applied, may instead of rejecting the application as provided in section 22, Procedure when objection raises any question of right or title or of extent of interest.

- (a) direct that the partition proceedings shall proceed for the purpose of forming and assigning to the applicant a separate estate in accordance with the extent of interest claimed by him in the parent estate; or
- (b) direct that such proceedings be postponed for four months.

24. At the expiration of the said four months the Collector shall resume the proceedings, unless the person who has made the objection, or some other person, — Resumption of proceedings after postponement.

- (a) has obtained an order from a Civil Court directing that such proceedings be stayed, or

(Secs. 25-26.)

(b) shows that a suit has been instituted before a Civil Court to try some question of such a nature as to lead the Collector to think the proceedings ought to be stayed until the question has been finally decided or until the proceedings in such Court in respect thereof shall have terminated.

25. No suit instituted in a Civil Court, after the lapse of four months after the Collector has—

(a) made a direction under clause (a) or clause (b) of section 23, or

(b) recorded a proceeding under section 29,

by any person claiming any right or title in or to a parent estate, shall avail to affect or stay the progress of any proceedings which may have been taken under this Act for the partition of the estate.

26. (1) Every decree affecting a parent estate made by a Civil Court after the estate has been declared under section 29 to be under partition, but before the date specified in the notice served under section 94—

(a) shall be made in recognition of the proceedings in progress under this Act for the partition of the estate, and

(b) shall be framed in such manner that the decree may be applied to, and carried out in reference to, the separate estates which the Collector in his proceeding recorded under section 29 has ordered to be formed out of the parent estate.

(2) If the effect of any such decree be to declare any person or body of persons to be entitled to any extent of interest in the parent estate in excess of the extent of interest which the Collector in the said proceedings has declared to be held by such person or body of persons, the decree shall specify, separately in respect of every proprietor or body of proprietors of whose interests the Collector has separately specified the extent in the said proceedings, the proportion of such excess which such person or body of persons is entitled to recover from every such proprietor or body of proprietors;

and every person or body of persons so entitled to recover any extent of interest from any such proprietor or body of proprietors shall, for the purposes of the partition proceedings be deemed to have the same rights, and to be subject to the same liabilities, as a person who has acquired such extent of interest from a proprietor or body of proprietors by private purchase after an estate has been brought under partition under section 29 and on the date on which the decree was passed;

and such person or body of persons may apply, as in this Act provided, for the separation and assignment to him or them of the lands representing the extent of interest so acquired;

Suits instituted after four months not to affect or stay proceedings for partition.

Decree made while partition proceedings are in progress.

(Secs. 27-28.)

and, notwithstanding anything contained in section 11, such application shall be dealt with as provided in section 30;

and the lands thereupon assigned to the said person or body of persons shall be amalgamated with his or their separate estate.

27. (1) Every decree affecting a parent estate made by a Civil Court after the date specified in the notice served under section 94, in a suit which was instituted as mentioned in section 25,—

Decree made after partition proceedings completed.

- (a) shall be made in recognition of the partition proceedings, and
- (b) shall be framed so as to give effect to the division of the parent estate into separate estates which has been ordered by the Collector, and so as not to disturb such division.

(2) If the effect of any such decree be to declare any person or body of persons to have been entitled to any extent of interest in the parent estate in excess of the extent of interest which is represented by the separate estate assigned to such person or body of persons by the Collector in the partition proceedings the decree shall specify, separately in respect of the proprietor or joint proprietors of every separate estate formed by the partition, the proportion of such excess of interest which such person or body of persons is entitled to recover from such proprietor or joint proprietors;

and every person or body of persons so entitled to recover any extent of interest from the proprietor or joint proprietors of a separate estate shall be entitled to recover such extent of interest out of the separate estate which has been assigned to such proprietor or joint proprietors, and out of such separate estate only;

and the decree shall be executed by placing the person or persons so entitled in the position of a recorded joint proprietor or recorded joint proprietors of such separate estate, holding the same as a joint undivided estate in common tenancy with the proprietor or joint proprietors to whom such separate estate was assigned by the Collector in the partition proceedings, the extent of the interest of the joint proprietors respectively in such estate being such as is declared in the decree.

28. (1) A Civil Court may at any time direct the Collector, upon an application being made to him in accordance with sections 17, 18 and 19,—

Power of Civil Court to order partition on application being made to Collector.

- (a) to assign to any person land representing a specified interest in any estate, or in any specified village or tract of land in an estate, to be held by such person as a separate estate; or
- (b) to divide off from any estate any specified land or villages, and to assign it or them to any person to be held as a separate estate:

(Sec. 29.)

Provided that no Civil Court shall in any such case—

- (i) specify the amount of land-revenue for which any separate estate which it may direct to be formed under the provisions of this section shall be liable, or
- (ii) direct the Collector to carry out a partition otherwise than in accordance with the provisions of this Act.

(2) The Collector shall assess the land-revenue on every such separate estate in accordance with the provisions of this Act.

Admission of application for partition, and procedure thereupon.

29. If no objection be made, within the time specified in the notification published under section 21, to an application for partition, or when all objections have been disposed of, and if the Collector has no reason to believe that any obstacle exists to his making the partition as applied for,

he shall direct that the application be admitted, and shall record a proceeding—

- (a) declaring the estate to be under partition for the purpose of forming and assigning to the applicant a separate estate;
- (b) declaring the extent of interest in the parent estate which he finds to be held by the applicant or joint applicants; or, if more than one separate application for separation has been admitted, the extent of interest in the parent estate which he finds to be held by every separate applicant or body of joint applicants, respectively;
- (c) declaring the extent of interest which remains to any recorded proprietor or body of recorded proprietors who are not applicants;
- (d) ordering that land proportionate to the interest so declared to be held by each applicant, or body of joint applicants respectively, shall be formed into a separate estate, to be assigned to such applicant or body of joint applicants; and
- (e) ordering that land proportionate to the interest so declared to remain to any recorded proprietor or body of recorded proprietors who are not applicants shall be left forming a separate estate;

and shall at the same time issue a notice to each of the proprietors by registered post letter informing him that the application for partition has been admitted and that the partition will be proceeded with, and requiring him to register his name and address and to appoint an agent to accept service of process and to make any appearance or application or do any act required or authorized to be made or done by a party to a partition under this Act.

(Secs. 30-33.)

30. (1) At any time after the Collector has recorded a proceeding under section 29, and before the Deputy Collector has partitioned the land into separate estates under section 57, any recorded proprietor in the estate, other than the original applicant, may apply for the separation of his share.

Subsequent application for separation of any other share.

(2) The Collector may reject or admit any such application; and if he admits it may order either that proceedings for affecting such separation shall be carried on simultaneously with the previous proceedings, or that compliance with the application be postponed until such previous proceedings have been completed, and the shares separated in accordance therewith.

(3) When the consideration of any application which has been postponed under sub-section (2) is resumed, the papers of the previous proceedings aforesaid may be used so far as they are applicable.

31. The Collector may refer any application for partition to any Deputy Collector for the purpose of making inquiries and doing any other thing authorized or required by this Chapter:

Power of Collector to refer application for partition to Deputy Collector

Provided that every order—

- (a) rejecting an application under section 22,
- (b) directing, under section 23, that partition proceedings shall proceed or shall be postponed,
- (c) directing, under section 29, that an application for partition be admitted,
- (d) made under section 30, or
- (e) appointing a Deputy Collector under section 32,

and every proceeding recorded under section 29, shall be made and recorded, respectively, by the Collector and not by any Deputy Collector.

32. As soon as the Collector has declared an estate to be under partition as provided in section 29, he may appoint a Deputy Collector to carry out the partition and all or any of the proceedings necessary thereto.

Power of Collector to appoint Deputy Collector to carry out partition.

33. (1) If, at any time after an order has been passed for making a partition of a parent estate, all the recorded proprietors of the estate present a petition to the effect that they do not wish the partition to proceed, the Collector may, after such inquiry as he considers necessary, strike the partition case off the file, and at the same time require the proprietors to pay all costs incurred in and about the partition.

Power to strike partition case off the file, on petition of parties.

(2) Any such costs which have not already been levied as provided in section 37 shall be levied in proportion to the shares of the respective proprietors.

Recovery of costs.

(Secs. 34-38.)

Power of
Commissioner
to strike
partition case
off the file.

34. (1) If, at any time after an order has been passed for making a partition, it appears to the Commissioner that any sufficient reason exists why the partition should not be proceeded with,

he may, on the report of the Collector or otherwise, after issuing a notice calling on the persons interested to show cause why the partition case should not be struck off the file, and after considering any objections which may be made, order the partition case to be struck off the file.

Recovery of
costs.

(2) All costs which have not already been levied as provided in section 37 shall thereupon be levied in proportion to the shares of the respective proprietors.

CHAPTER V.

ESTABLISHMENTS AND COSTS.

Power to
appoint estab-
lishments
and prescribe
scale of re-
muneration.

35. The Deputy Collector, with the approval of the Collector, and subject to any rules made in that behalf by the Board,^[1] may appoint such persons as may be needed for the purposes of any proceedings under this Act and prescribe the scale of their remuneration.

Power to
appoint
special
establish-
ment.

36. In any district or division in which partitions are so numerous or extensive as to render necessary the appointment of a special establishment in the office of the Collector or of the Commissioner, the Collector or the Commissioner, as the case may be, with the previous sanction of the Board,^[1] may appoint such establishment.

Estimating
and levy of
cost of
partition.

37. (1) As soon as possible after an estate has been declared to be under partition as provided in section 29, the Collector shall estimate the cost of making the partition; and the amount shall be levied from the proprietors in such instalments and at such times as may be fixed by rules made by the Board.^[1]

(2) If the amount first estimated is found insufficient, supplementary estimates may be made from time to time, and the required amount may be levied as provided in sub-section (1).

Apportion-
ment of cost
of partition.

38. The cost of making a partition shall be apportioned on the proprietors of the several shares in proportion to their shares:

Provided that whenever it appears to the Collector that any partition proceedings have been unnecessarily delayed and the cost of the partition enhanced, by obstacles vexatiously put in the way of the completion of the proceedings by one or more of the proprietors, or by want of due

^[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), *post*, p. 385.

(Secs. 39-41.)

diligence on the part of one or more of the proprietors in carrying out any requisition made upon him or them,

the Collector may direct that such portion of the cost as he may think proper, in excess of the amount proportionate to the share or shares of such proprietor or proprietors, shall be paid by him or them.

39. Whenever any local inquiry is held by the Deputy Collector or any other officer, in consequence of an objection raised by any person to any record of measurements, rent-roll or other information which has been laid before the Deputy Collector,

the Deputy Collector may declare the cost which has been incurred by such inquiry, and may direct that the entire cost so declared—

(a) shall be paid by the person making the objection, or by any one of the proprietors; or

(b) shall be paid, in such proportions as the Deputy Collector thinks fit, by the said person and the proprietors or any of them; or

(c) shall be deemed to be a part of the cost of the partition.

40. (1) Upon the completion of a partition, the Collector shall make an order declaring the total cost thereof.

(2) The account shall then be adjusted, either by returning to the proprietors any sums which they may have paid in excess of the total cost, or, if necessary, by levying from them, in the manner provided in section 108, any sums remaining due.

41. (1) Whenever it appears to the Lieutenant-Governor that the work required to be done in connection with partitions under this Act in any district is so great that it would, if concentrated in the hands of one or more Deputy Collectors, fully occupy the time of such one or more Deputy Collectors, he may make an order directing that the salary of such one or more Deputy Collectors, as the case may be, shall be recovered from the proprietors of estates under partition in such district, as part of the costs of such partitions.

(2) For the purposes of sub-section (1) the salary of a Deputy Collector shall be deemed to be the amount of salary which is drawn by a Deputy Collector of the lowest grade.

(3) Whenever it appears to the Lieutenant-Governor that the said work in any district is so great as to occupy a considerable portion, though not the whole, of the time of a Deputy Collector,

or whenever a special establishment is appointed under section 36, the Lieutenant-Governor may direct that a portion of the salary of such Deputy Collector or the whole of the cost of such special establishment shall be recovered from the proprietors of estates under partition in such district, as part of the costs of such partitions.

Power of Deputy Collector to declare cost of local inquiry and by whom it is to be paid.

On completion of partition, total cost to be declared and account adjusted.

Power to direct that salary of Deputy Collector, and cost of special establishment, be recovered as part of costs of partitions.

(Secs. 34-38.)

Power of
Commissioner
to strike
partition case
off the file.

34. (1) If, at any time after an order has been passed for making a partition, it appears to the Commissioner that any sufficient reason exists why the partition should not be proceeded with,

he may, on the report of the Collector or otherwise, after issuing a notice calling on the persons interested to show cause why the partition case should not be struck off the file, and after considering any objections which may be made, order the partition case to be struck off the file.

Recovery of
costs.

(2) All costs which have not already been levied as provided in section 37 shall thereupon be levied in proportion to the shares of the respective proprietors.

CHAPTER V.

ESTABLISHMENTS AND COSTS.

Power to
appoint estab-
lishments
and prescribe
scale of re-
muneration.

35. The Deputy Collector, with the approval of the Collector, and subject to any rules made in that behalf by the Board,^[1] may appoint such persons as may be needed for the purposes of any proceedings under this Act and prescribe the scale of their remuneration.

Power to
appoint
special
establish-
ment.

36. In any district or division in which partitions are so numerous or extensive as to render necessary the appointment of a special establishment in the office of the Collector or of the Commissioner, the Collector or the Commissioner, as the case may be, with the previous sanction of the Board,^[1] may appoint such establishment.

Estimating
and levy of
cost of
partition.

37. (1) As soon as possible after an estate has been declared to be under partition as provided in section 29, the Collector shall estimate the cost of making the partition; and the amount shall be levied from the proprietors in such instalments and at such times as may be fixed by rules made by the Board.^[1]

(2) If the amount first estimated is found insufficient, supplementary estimates may be made from time to time, and the required amount may be levied as provided in sub-section (1).

Apportion-
ment of cost
of partition.

38. The cost of making a partition shall be apportioned on the proprietors of the several shares in proportion to their shares:

Provided that whenever it appears to the Collector that any partition proceedings have been unnecessarily delayed and the cost of the partition enhanced, by obstacles vexatiously put in the way of the completion of the proceedings by one or more of the proprietors, or by want of due

^[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), *post*, p. 385.

(Secs. 39-41.)

diligence on the part of one or more of the proprietors in carrying out any requisition made upon him or them,

the Collector may direct that such portion of the cost as he may think proper, in excess of the amount proportionate to the share or shares of such proprietor or proprietors, shall be paid by him or them.

39. Whenever any local inquiry is held by the Deputy Collector or any other officer, in consequence of an objection raised by any person to any record of measurements, rent-roll or other information which has been laid before the Deputy Collector,

Power of Deputy Collector to declare cost of local inquiry and by whom it is to be paid.

the Deputy Collector may declare the cost which has been incurred by such inquiry, and may direct that the entire cost so declared—

- (a) shall be paid by the person making the objection, or by any one of the proprietors; or
- (b) shall be paid, in such proportions as the Deputy Collector thinks fit, by the said person and the proprietors or any of them; or
- (c) shall be deemed to be a part of the cost of the partition.

40. (1) Upon the completion of a partition, the Collector shall make an order declaring the total cost thereof.

On completion of partition, total cost to be declared and account adjusted.

(2) The account shall then be adjusted, either by returning to the proprietors any sums which they may have paid in excess of the total cost, or, if necessary, by levying from them, in the manner provided in section 108, any sums remaining due.

41. (1) Whenever it appears to the Lieutenant-Governor that the work required to be done in connection with partitions under this Act in any district is so great that it would, if concentrated in the hands of one or more Deputy Collectors, fully occupy the time of such one or more Deputy Collectors, he may make an order directing that the salary of such one or more Deputy Collectors, as the case may be, shall be recovered from the proprietors of estates under partition in such district, as part of the costs of such partitions.

Power to direct that salary of Deputy Collector, and cost of special establishment, be recovered as part of costs of partitions.

(2) For the purposes of sub-section (1) the salary of a Deputy Collector shall be deemed to be the amount of salary which is drawn by a Deputy Collector of the lowest grade.

(3) Whenever it appears to the Lieutenant-Governor that the said work in any district is so great as to occupy a considerable portion, though not the whole, of the time of a Deputy Collector,

or whenever a special establishment is appointed under section 36, the Lieutenant-Governor may direct that a portion of the salary of such Deputy Collector or the whole of the cost of such special establishment shall be recovered from the proprietors of estates under partition in such district, as part of the costs of such partitions.

Estates
Partition
Fund.

42. (1) The Lieutenant-Governor may direct that in any district a Fund, to be called the "Estates Partition Fund," shall be formed, into which all sums levied from the proprietors of estates in such district in respect of partitions of their estates shall be paid and from which all costs of making partitions of estates in such district shall, except as provided in section 43, be defrayed.

(2) When the formation of an Estates Partition Fund has been directed in any district, the charges leviable in that district from the proprietors of any estate under partition may, notwithstanding anything contained in the foregoing sections of this Chapter, be levied according to a general scale of fees to be fixed by the Board.^[1]

(3) Such scale of fees shall be fixed, as nearly as may be, so that the receipts and expenditure of the said Fund shall balance one another, and shall be revised from time to time by the Board^[1] so as to secure compliance with this condition.

(4) The said fees shall be apportioned, and the proportionate amount thereof due from any proprietor or proprietors may be increased, in the manner and under the circumstances mentioned in section 38.

(5) The said fees shall be levied from the proprietors in such instalments and at such times as may be fixed in accordance with any rules which the Board^[1] may make in this behalf.

(6) An abstract of the Estates Partition Fund of each district, made up to the end of each financial year, shall be published in the Calcutta Gazette and posted up at the office of the Collector of the district.

Order by
Civil Court
for payment
by parties of
costs of parti-
tion.

43. (1) Whenever any Civil Court makes a decree awarding or declaring any proprietary right in an estate, and requires the Collector to make a partition of the estate, the Court shall, subject to the provisions of sections 38 and 39, at the same time direct either—

(a) that the party or parties who has or have withheld the right so decreed shall defray the whole of the costs of the partition or the whole of the fees payable in respect of the partition under section 42, or

(b) that the said costs or fees shall be defrayed by all or any of the parties to the suit in which the decree was made, in such proportions as the Court may, upon a consideration of the particular circumstances of the case, deem equitable.

(2) Copies of all orders passed under sub-section (1) shall be transmitted to the Collector for his guidance, together with the precept which the Court issues to him requiring him to divide the estate; and the Collector shall levy the said costs or fees from the parties, in accordance with the order, in the same manner and by the same means as if the levy of such costs or fees had been ordered by himself.

[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), *post*, p. 385.

(Secs. 44-47.)

CHAPTER VI.

PROCEEDINGS UP TO THE DETERMINATION OF THE PARTITION.

Ben. Act 5
of 1887.

§ of 1885.

44. Every Deputy Collector making a partition shall, as regards the estate under partition, have, so far as they are applicable, all the powers exercisable by a Survey-officer under the Bengal Survey Act, 1875,^[1] and by a Revenue-officer employed in preparing a record-of-rights under Chapter X^[2] of the Bengal Tenancy Act, 1885.

Powers of
Deputy Col-
lector in
making a
partition.

45. As soon as the Collector has recorded a proceeding under section 29, declaring an estate to be under partition, the Deputy Collector shall, subject to the provisions of section 49, make a survey and prepare a record of existing rents and other assets of all lands included in the estate.

Deputy Col-
lector when
to make sur-
vey and pre-
pare record
of existing
rents and
assets.

46. In making a survey and preparing a record of existing rents and other assets of land under section 45, the Deputy Collector shall ascertain and record the following particulars, namely:—

Particulars
to be re-
corded.

- (a) the name of each proprietor, landlord and tenant of the estate, and of every owner of revenue-free land and occupier of rent-free land therein;
- (b) the situation, area and boundaries of the land owned or occupied by each of the said persons, and the character and extent of the interest held by each and the area of all other land in the estate which is not held by tenants;
- (c) the rent then payable for all rent-paying lands,—
 - (i) as stated by the landlord,
 - (ii) as stated by the tenant, and
 - (iii) as taken by the Deputy Collector for the purposes of the partition; and
- (d) the assets, if any, of all other lands;

and shall be guided by such rules as the Board may make under section 121, clause (I).

47. (1) When the Deputy Collector has made a survey and prepared a record of existing rents and other assets of land under section 45, he shall publish a notification, in a form to be prescribed by the Board,^[3] fixing a day on which he will be present in the village, or at a convenient place within limits of distance to be fixed by general or special order of the Board,^[3] for the purpose of attesting the survey papers and record of existing rents and other assets.

Attestation
survey
papers and
record of
existing
rents and
assets.^[1] Printed in Vol. II of this Code.^[2] Printed in Vol. I of this Code.^[3] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), *post*, p. 385.

(Secs. 48-50.)

(2) On the date fixed by the notification, or on any other date to which the proceedings may be adjourned, the entries made in the record of existing rents and other assets under section 46, or such of them as the Board^[1] may by rule prescribe shall be read out, and corrected or added to as may appear necessary, in the presence of such of the interested persons as are in attendance.

(3) If the correctness of any entry is disputed, the Deputy Collector shall note the statements of such of the persons aforesaid as are interested in the disputed entry and shall, after making such local inquiry, if any, as he thinks fit, pass a summary order declaring what entry shall be accepted for the purposes of the partition.

(4) If the correctness of any measurement is called in question and a fresh measurement is demanded, the Deputy Collector may require the costs of the re-measurement to be deposited.

(5) If the re-measurement shows the original measurement to have been inaccurate, the amount deposited shall be refunded to the objector.

Publication
of survey
papers and
record of
existing
rents and
assets.

48. When the survey papers and the record of existing rents and other assets have been attested as provided in section 47, the Deputy Collector shall cause a copy thereof to be locally published in such manner and for such period as the Board^[1] may by rule prescribe, and there shall be furnished to each landlord and tenant a copy of such of the entries relating to his estate, tenure, or holding, as the case may be, as the Board^[1] may by rule prescribe.

Power of
Deputy Col-
lector to
accept previ-
ous survey
record-of-
rights,
measurements
or rent-rolls,
instead of
making a
new survey
and a record
of existing
rents and
assets.

49. If at any time a survey of the estate under partition or any part thereof has been made or a record-of-rights prepared by an officer appointed in that behalf under the orders of the Government, or

if any measurement papers and rent-rolls are filed under section 19, or at any time before a survey has been begun under section 45, and if the correctness of such measurement papers and rent-rolls is admitted in writing by all the proprietors, and is verified by the Deputy Collector after testing on the spot, and if the Deputy Collector is satisfied that the land-revenue would not be endangered,

the Deputy Collector may, unless the Collector otherwise directs, and after making any correction which may appear necessary, accept the papers of such survey, or the said record-of-rights, measurement papers or rent-rolls, instead of making a new survey and preparing a record of existing rents and other assets under section 45.

Record of
order, fixing
of day for

50. When the documents referred to in section 48 have been published or any documents referred to in section 49 have been accepted,

^[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), *post*, p. 385.

(Secs. 51-53.)

the Deputy Collector shall record an order stating that such documents have been adopted for the purposes of the partition and shall—

determining partition, and service of notices.

(a) fix a day on which to determine the partition of the lands into the several separate estates,

(b) publish a notification calling on all the proprietors to be present on the day so fixed, such day being not less than thirty or more than sixty days after the publication of the notification in his office, and at the same time serve a notice on each of the proprietors to the same effect, and

(c) serve a similar notice on the proprietors of each of the adjoining estates, inviting them to appear and file their objections, if any, if they dispute the possession of any land of the estate under partition.

CHAPTER VII.

PARTITION BY AMICABLE ARRANGEMENT OR BY ARBITRATION.

51. (1) If all the recorded proprietors present, on or before the day fixed under section 50, a petition requesting to be allowed to make the partition on the basis of the papers adopted by the Deputy Collector under Chapter VI,—

Power to allow partition to be made by proprietors themselves or by arbitrators.

(a) privately among themselves, or

(b) by arbitration,

the Deputy Collector may grant the request.

(2) If, after such request has been granted, the proprietors or the arbitrators fail to make the partition within such time as may be fixed by the Deputy Collector in that behalf, the Deputy Collector shall make the partition himself.

52. When a partition has been referred to arbitration, the proceedings shall, except as hereinafter otherwise expressly provided, be conducted in accordance with the provisions of sections 506 to 522^[1] (both inclusive) of the Code of Civil Procedure, so far as they are applicable.

Procedure on reference to arbitration.

53. (1) The arbitrator or arbitrators shall within a period to be fixed by the Deputy Collector, which period may be further extended by him, deliver to the Deputy Collector a full and complete paper of partition, in such form as the Board^[2] may, by rule, prescribe.

Arbitrators to deliver a partition paper.

(2) If default is made in complying with sub-section (1), the Deputy Collector may withdraw the case from arbitration and may make the partition himself.

^[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rules 1 to 16 in Schedule II to that Code—see s. 158 thereof, in the General Acts, 1904-09, Ed. 1909, p. 184.

^[2] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), *post*, p. 385.

(Secs. 54-57.)

Remunera-
tion of arbi-
trators.

54. (1) The arbitrator or arbitrators, on delivering the paper of partition as aforesaid, shall be entitled to reasonable fees for his or their services.

(2) The amount of such fees shall be fixed, with the approval of the Commissioner, by the Deputy Collector who made the reference to arbitration, and shall be deemed to form part of the costs of making the partition.

Approval of
Collector and
other autho-
rities.

55. Every partition made under this Chapter by proprietors or by an arbitrator or arbitrators shall be subject to the approval of the Collector and the confirmation of the Commissioner:

Provided that no such partition shall be disallowed except—

(a) on the ground of fraud, or

(b) on the ground that the partition cannot be confirmed without endangering the safety of the land-revenue.

Assessment
of land
revenue.

56. When a partition has been made under this Chapter, the land-revenue on each separate estate into which the parent estate is divided by such partition shall be assessed by the Collector in the manner prescribed by section 10.

CHAPTER VIII.

MAKING OF PARTITIONS BY THE DEPUTY COLLECTOR, AND APPROVAL THEREOF BY THE COLLECTOR.

Procedure
where no peti-
tion presen-
ted under
section 51.

57. (1) If no petition is presented under section 51, the Deputy Collector shall, on the day fixed under section 50, or on any subsequent day or days to which the hearing may be postponed by notice posted at his office,—

(i) consult all proprietors who are present, and

(ii) hear, and after such inquiry as he may consider necessary, dispose of any objections which they may urge.

(2) The Deputy Collector shall then proceed to determine how the lands of the parent estate shall be partitioned into the separate estates, and all matters arising out of such partition; and shall cause to be prepared—

(a) a paper of partition, in a form prescribed by rules made by the Board,^[1] specifying in detail—

(i) the lands which he has included in each separate estate, and the area of such lands,

[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), *post*, p. 385.

(Secs. 58-59.)

- (ii) the rental of such lands, and the other assets, if any, of each separate estate,
- (iii) the name or names of the recorded proprietor or proprietors of each separate estate,
- (iv) any stipulations which may have been made regarding places of worship, tanks or other matters mentioned in Chapter IX, and
- (v) the amount of land-revenue to be assessed on each separate estate in the manner prescribed by section 10; and
- (b) a map showing the lands which fall within each separate estate and the boundaries of such lands.

(3) In making the partition the Deputy Collector shall be guided by the provisions of Chapter IX, and shall make the partition in the manner which, in his opinion, is on the whole most in accordance with those provisions and most equitable and convenient to all parties concerned.

58. (1) The partition, as made under this Chapter, shall be submitted for the sanction of the Collector, and he shall by notice fix a day for the consideration of the same. Submission of case to Collector: his duties.

(2) Every such notice shall be served on the proprietors and shall be published in the manner prescribed by section 104.

(3) The day fixed by the said notice shall be not less than fifteen days after the publication of the notice at the Collector's office.

(4) After hearing and disposing of any objection which may be preferred, the Collector shall pass such orders as he may think proper—

- (a) approving the partition, with or without amendments; or
- (b) making a new partition; or
- (c) returning the papers to the Deputy Collector for amendment of the partition, or for making a new partition, with such directions as to the Collector may seem fit in regard to the issue of a notice to appear to the proprietors or any of them who are specially interested.

(5) If the papers are returned to the Deputy Collector, the Collector shall, on their re-submission, proceed again to consider the partition as provided in the foregoing sub-sections of this section.

59. (1) When the partition has been approved by the Collector, the Deputy Collector shall, after making such alterations as may be necessary in the partition paper or map, or preparing a new partition paper or map, in accordance with the orders passed by the Collector, Duties of Deputy Collector when partition has been approved by

(a) cause to be prepared a separate extract of the portion of the partition paper which relates to each separate estate;

(Secs. 60-62.)

Collector,
or when
Collector
makes a new
partition.

(b) cause to be tendered to any recorded proprietor of a separate estate, or any authorized agent of such proprietor, who may be in attendance at the Deputy Collector's office, the extract which relates to such separate estate, and

(c) publish a notification at his office calling upon every proprietor to whom or to whose agent an extract from the partition paper has not been tendered as aforesaid, to take out of the Deputy Collector's office the extract of the portion of the partition paper relating to his separate estate.

(2) If the circumstances of the partition so require, an extract of the map prepared by the Deputy Collector, or a copy of such map, shall be annexed to every separate extract from the partition paper mentioned in sub-section (1).

(3) The Deputy Collector shall also proceed in the manner hereinbefore provided when the Collector makes a new partition.

Proprietor
not appear-
ing on fixed
day not en-
titled to
make objec-
tion.

60. No proprietor who has failed to appear before the Deputy Collector in person or by agent on a day fixed, under section 50 or section 57 for the partition of the lands into the several separate estates, and no proprietor who has failed so to appear before the Collector on a day fixed under section 58, shall, unless he shows sufficient cause for such failure, be entitled at any subsequent time to make any objection to the orders which may be passed on such days respectively.

Submission
of the papers
to the Com-
missioner
after approval
of the parti-
tion by the
Collector.

61. When a partition has been approved by the Collector, or when he has made a new partition, and after the tender of extracts and the publication of a notification as provided in section 59, the Collector—

shall cause a notice to be served on each of the recorded proprietors, stating that the papers will be submitted at once for confirmation of the partition by the Commissioner, and that any appeals or objections must be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days from the date of the service of the said notice;

and shall, after the issue of such notice, forward to the Commissioner all papers relating to the partition.

CHAPTER IX.

GENERAL PRINCIPLES FOR MAKING PARTITIONS.

Lands held in common tenancy.

Separate
estates to
be made com-
pact.

62. Each separate estate shall be made as compact as is compatible with the primary object of making an equitable partition among the proprietors and with the provisions of this Chapter.

(Secs. 63-67.)

63. In selecting the villages or land to be assigned to each separate estate formed out of a parent estate which has been held in common tenancy, the Collector shall take into consideration the advantages or disadvantages arising from—

Circumstances to be considered in making partition.

- (a) situation;
- (b) the vicinity of roads, railways or navigable rivers or canals;
- (c) the nature and quality of the soil and produce;
- (d) the quantity of cultivable and uncultivable waste land;
- (e) the facilities for irrigation;
- (f) the state of embankments and water-courses; and
- (g) liability to accretion and diluvion;

and any other circumstances affecting the value of the land.

64. (1) If a dwelling-house belonging to one proprietor is situated on any land which it may be necessary to include in the separate estate of another proprietor, the owner of the house may retain occupation thereof, with the buildings and grounds immediately attached thereto, upon agreeing to pay rent annually in perpetuity for the land occupied by the house, buildings and grounds to the proprietor of the separate estate in which such land is included.

Rights when dwelling-house belonging to one proprietor is situated on land to be allotted to another proprietor.

(2) The limits of the land so occupied and the rent to be paid for it shall be fixed by the Deputy Collector, and shall be stated in the paper of partition.

(3) In every such case a defined pathway shall, as far as possible, be secured to the owner of the house, leading from the house to some portion of the separate estate allotted to him.

65. Whenever the Deputy Collector thinks fit, he may apply the provisions of section 64 to gardens, orchards, land planted with bamboos, and any other land which in his opinion is of special value to the proprietor in whose occupation it is found to be, in consequence of improvements made by such proprietor or of the particular use to which such land is put.

Power to apply section 64 to gardens, etc.

66. The rent fixed in perpetuity on any land by the Deputy Collector under section 64 or section 65 shall be deemed, for the purposes of the partition, to be the assets of such land.

Rent for land fixed under section 64 or 65 deemed to be the assets of the land.

67. When the dwelling-house of one proprietor, with the buildings and grounds immediately attached thereto, has been included in the separate estate of another proprietor, and the rent to be paid in perpetuity for the land occupied thereby has been fixed by the Deputy Collector and stated in the paper of partition,

Redemption of rent fixed under section 64.

(Secs. 68-72.)

the first-mentioned proprietor may apply to the Deputy Collector for permission to redeem the rent so fixed, and the Deputy Collector shall give such permission unless he is of opinion that the redemption would endanger the safety of the land-revenue for the payment of which the separate estate in which such dwelling-house, buildings and grounds have been included will be liable.

Amount payable in redemption of rent.

68. (1) If the Deputy Collector give permission as aforesaid, he shall certify the amount payable by the applicant in redemption of the rent.

(2) Such amount shall be ten *per centum* above the sum which would be required to produce, in interest at four *per centum per annum*, an annual sum equal to the said rent.

Such amount when payable.

69. The amount certified under section 68 may be paid to the Deputy Collector at any time before, but not after, possession is under section 94, given to the several proprietors of the separate estates allotted to them.

Notice of payment to be given, and land to be held rent-free.

70. On receipt of such payment, the Deputy Collector shall give notice to the proprietor in whose separate estate the land is situated—

- (a) that such payment has been made;
- (b) that the sum will be paid to him or to his authorized agent on application, and
- (c) that, from the date on which possession as aforesaid is given, the proprietor who has redeemed the rent of such land will be entitled to hold the land as a rent-free tenure secured against the proprietor to whom the notice is given and against any auction-purchaser at a sale for arrears of revenue, including the Government;

Collector to register the rent-free tenure.

and from such date the land shall be so held as a rent-free tenure.

71. The Deputy Collector shall at the same time give notice to the Collector of the district of the creation of such tenure, and the Collector shall thereupon cause such tenure to be specially registered in the manner provided by section 42 of Act 11 of 1859^[1] (*an Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*) or by any similar law for the time being in force.

Drawing of lots for equal shares.

72. When two or more of the separate estates consist of the same proportions of the parent estate, the Deputy Collector may, if he thinks proper, direct the parties entitled thereto respectively to draw lots in his presence for the equal separate estates which have been formed by assignment of land,

[1] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

(Sec. 73.)

unless the recorded proprietors of the equal shares agree among themselves as to the allotment of the equal separate estates and present a petition to that effect, or

unless for any other reason the Deputy Collector, with the sanction of the Collector, thinks proper to assign the equal separate estates to the proprietors of the equal shares without causing lots to be drawn.

73. (1) When the aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares, the Deputy Collector, with the sanction of the Collector, may cause such aggregate shares to be treated as one share for the purpose of determining by lots as aforesaid which portion of the parent estate shall be assigned to each proprietor as his separate estate; and may decide which shares shall be formed into one aggregate share for the purpose of causing such lots to be drawn; and may cause lots to be drawn in like manner as often as he thinks proper for such purpose.

(2) After lots have been drawn once (or more than once if necessary) as aforesaid, the Deputy Collector shall proceed to divide the portion of the parent estate which has fallen by lot to each aggregate share, among the proprietors of the different shares which were formed into such aggregate share for the purpose of drawing lots, and shall assign to every such proprietor his separate estate within such portion in such position as the Deputy Collector may think proper.

Illustrations.

I.—The partition of a parent estate is being made into the following shares:—

8 annas.	3 annas
4 annas.	1 anna.

For the purposes of drawing lots, the 4 annas, 3 annas and 1 anna shares may be taken together, and considered to be an aggregate 8 annas share.

The Deputy Collector will divide the parent estate into two halves of equal value, and will then cause lots to be drawn, in order to determine which of the two halves shall be assigned to the proprietor of the integral 8 annas share, and which shall be divided among the proprietors of the 4 annas, 3 annas and 1 anna shares.

Subs by the p hand of share
to be drawn on the other the 1 anna

II.—The partition is being made of a parent estate into the following shares:—

6 annas.	3 annas.
4 annas.	2 annas.
	1 anna.

Two tracts in the estate may be first marked off, the value of each being equivalent to a 6 annas share; and then, for the purpose of drawing lots in respect of the assignment of these two tracts, the 4 annas share and the 2 annas share may be taken together as an aggregate 6 annas share, and lots may be drawn between the proprietor of the aggregate 6 annas share so formed on the one hand, and the proprietor of the integral 6 annas share on the other.

(Secs. 74-76.)

One of the two 6 annas tracts having thus been finally assigned to the proprietor of the integral 6 annas share, the Deputy Collector will proceed to assign the rest of the estate among the remaining shares; and he may again, for the purpose of causing lots to be drawn, mark off two tracts, the value of each of which shall be equivalent to 5 annas of the parent estate, and may cause lots to be drawn for these two tracts between the proprietors of the 4 annas share and the 1 anna share taken together as an aggregate 5 annas share on the one hand, and the proprietors of the 3 annas share and the 2 annas share taken together as another 5 annas share on the other.

Finally, their separate estates will be assigned to the proprietor of the 4 annas share and of the 1 anna share respectively, within the tract which fell to them jointly by lot; and their separate estates will be assigned to the proprietors of the 3 annas share and of the 2 annas share respectively within the tract which fell to them jointly by lot.

Deputy
Collector
may require
proprietors
to attend or
appoint agent
for the
purpose of
drawing lots.

74. The Deputy Collector may, by notice, require any proprietor, in respect of whose share lots are to be drawn as provided in section 72 or section 73, to attend at the office of the Deputy Collector in person or by authorized agent, at a time to be fixed by the Deputy Collector, for the purpose of drawing lots;

and may similarly require the proprietors of any shares which he may have ordered to be formed into an aggregate share for the purpose of drawing lots, jointly to appoint an agent to draw lots on their joint behalf, and if at the time fixed for drawing such lots, such proprietors have failed to agree to any such joint appointment, or fail to cause the attendance of an agent authorized to act jointly for all such proprietors, all such proprietors shall be deemed to have failed to comply with the Deputy Collector's requisition.

In default,
Deputy
Collector
may appoint
a person to
draw lots.

75. If any proprietor or proprietors fail to comply with a requisition of the Deputy Collector under section 74, the Deputy Collector may appoint a person to draw lots on behalf of such proprietor or proprietors.

Lands held in severalty.

Partition ac-
cording to
separate
possession,
and appor-
tionment of
land-revenue.

76. (1) When the lands of an estate have been divided by private arrangement formally made and agreed to by all the proprietors, and each proprietor is, in pursuance of such arrangement, in possession of separate lands held in severalty as representing his interest in the estate, the joint applications presented under section 7 may be to the effect—

(a) that a partition of the estate be made by assigning to each proprietor or to two or more proprietors jointly, as his or their separate estate or estates, the lands of which they are in separate possession in pursuance of such arrangement, and

(b) that each separate estate so formed be made liable for such portion of the entire land-revenue of the parent estate as was paid by the proprietor or proprietors thereof under the private arrangement aforesaid.

(Secs. 77-79.)

(2) The Deputy Collector who is appointed to carry out the partition in accordance with such application shall satisfy himself that the assets of each separate estate which it is proposed to form will be sufficient to secure the payment of the annual amount of land-revenue for which it is proposed to make such separate estate liable.

(3) If the Deputy Collector is not satisfied that the assets of each such separate estate will be sufficient as aforesaid, or that with reference to the circumstances of the case, the partition of the land and the assessment of the land-revenue thereon may be made in the manner proposed without endangering the safety of the land-revenue, he shall reject the application, unless all the recorded proprietors agree that the land-revenue for which the parent estate is liable shall be apportioned among the separate estates so to be formed in such a manner that the safety of the total amount of the land-revenue shall not be endangered.

77. Whenever the Deputy Collector who is appointed to carry out a partition finds that, in pursuance of a private arrangement formally made and agreed to by all the proprietors of an estate, the proprietors respectively, or any of the proprietors, are in possession of separate parcels of land held in severalty as representing portions only of their respective interests in the parent estate, while other land of the parent estate is held in common tenancy between such proprietors, then, notwithstanding anything contained in section 7, a joint application shall not be required, and the Deputy Collector shall allot to the separate estate of each proprietor the land of which such proprietor is found to be in possession in severalty in accordance with such private arrangement.

Lands of which each proprietor is in possession to be allotted to him.

if an estate is deemed to the parent and held by

tenants.

78. Notwithstanding anything in section 77, the Collector may cause any transfer of land agreed to by the parties to be made from the possession of one proprietor to that of another.

Collector may cause transfer of lands agreed to by parties.

Lands held in common tenancy and Lands held in severalty.

79. Places of worship, burning-grounds and burial-grounds which have been held in common previous to the partition of an estate, and land of which the proceeds have been assigned by the proprietors jointly for religious, charitable or public purposes, shall continue to be held in common unless the proprietors otherwise agree among themselves, in which case they shall state in writing the agreement into which they

Places of worship, etc.

(Secs. 80-83.)

have entered, and the Deputy Collector shall enter a note of the agreement in the paper of partition.

Tanks, wells, water-courses, reservoirs and embankments.

80. (1) Tanks, wells, water-courses, reservoirs and embankments shall be deemed to be attached to the land for the benefit of which they were originally made.

(2) In cases in which, from the extent, situation or construction of any such works, it is found necessary that they should remain the joint property of the proprietors of two or more separate estates, the paper of partition shall specify, as far as the circumstances admit, the extent to which the proprietors of each of such estates may make use of the same, and the proportion of the charges for repairs to be borne by them respectively.

Splitting-up of tenure or holding, and apportionment of rent thereof.

81. (1) No tenure or holding shall be split up for the purposes of a partition unless it is reasonably necessary to do so in order to effect an equitable partition.

(2) If a tenure or holding be split up as aforesaid, the total existing rent thereof, as ascertained under Chapter VI, shall not be altered, but shall be apportioned among the several parts into which the tenure or holding is divided.

(3) When it is proposed to split up a tenure or holding and apportion the rent thereof as aforesaid, the Deputy Collector shall cause a notice to be served on the tenants concerned and, after hearing their objections, if any, may order that the tenure or holding be split up, and that the rent thereof be apportioned as aforesaid.

(4) The Deputy Collector shall notify such apportionment to the tenants concerned.

Land held rent-free not to be divided, except with consent of recorded proprietors.

82. When the Deputy Collector finds in a parent estate land which is claimed to be held rent-free and for which no rent is actually paid (whether the proprietors of the estate do or do not claim a right to receive rent from the land), he shall not make any division or assignment of such land among the separate estates, but shall specify in the partition papers and proceedings that such land is left appertaining jointly to all the separate estates which are formed out of the parent estate, in the proportion which each separate estate bears to the parent estate:

Provided that such land or any of it may be allotted among the different separate estates with the consent of all the proprietors of the parent estate.

Land held at fixed rent

83. (1) When the Deputy Collector finds in a parent estate any land which is held at a fixed rent on a *patni* or other permanent intermediate

(Secs. 84-85.)

tenure created by all the proprietors of the estate or admitted by all the recorded proprietors to have been so created, he may either— on permanent intermediate tenure.

- (a) assign such land and the assets thereof entirely to one or more of the separate estates formed out of the parent estate; or
- (b) leave such land unassigned to any separate estate, and specify in the partition paper and proceedings that the land is left appertaining jointly to all the separate estates which are formed out of the parent estate in the proportion which each separate estate bears to the parent estate.

(2) In the event of such land being so left unassigned, the Deputy Collector shall assign to each separate estate such share of the rent of the tenure as bears the same proportion to the entire rent of the tenure as the separate estate bears to the parent estate.

(3) In dealing with a tenure under this section, the Deputy Collector shall take into consideration the extent of the land comprised in the tenure, and all other circumstances of the case.

84. When any land is held in common between the proprietors of two or more estates, one of which is under partition in accordance with the provisions of this Act, the Deputy Collector shall first allot to the estate under partition a portion of such common land of which the assets are in proportion to the interest which the proprietors of such estate hold in the said common land; Land held in common between the proprietors of two or more estates may be dealt with when one estate is under partition.

and all the provisions of this Act in respect of the allotment, between the shareholders in one estate, of land which is held jointly by such shareholders, shall, as far as possible, apply to the allotment of the proportionate share of such common land to the estate under partition;

and, in respect of the service of notices, the hearing of objections, and all other procedure in view to such allotment, the proprietors of the estate under partition, and all other proprietors of estates who have an interest in the said common land, shall be deemed to be joint proprietors of a parent estate consisting only of the land so held in common:

Provided that all costs of any division of lands so held in common between the proprietors of two or more estates shall be deemed to be costs of making the partition of the estate which is under partition, and shall be leviable, as provided by this Act, from the proprietors of such estate; and the proprietors of any other estate having an interest in such lands shall not be required to bear any portion of such costs.

85. Notwithstanding anything contained in section 84, if it appears to the Collector that the proceedings for any such division have been unnecessarily delayed and the cost of such division enhanced, by obstacles vexatiously put in the way of the completion of such division When proprietors of other estates may be required

(Secs. 86-88.)

to pay a portion of the costs of making a division under section 84.

by any proprietor of any estate other than that under partition, or by want of due diligence on the part of any such proprietor in carrying out any requisition made upon him,

the Collector may direct that such sum as he shall think fit shall be levied from every such proprietor who is responsible for such delay or additional cost;

and every sum so levied shall be taken in diminution of the amount payable by the proprietors of the estate under partition as costs of such partition.

Allotment made under section 84 to be submitted to the Collector.

86. Every allotment made under section 84 shall be submitted for the approval of the Collector, who may confirm, amend or reject the same, and if he rejects it, may make or direct to be made another allotment.

Land so allotted how to be dealt with.

87. When any allotment made under section 84 has been approved by the Collector, the land so allotted shall be dealt with in every respect as if it were held in common tenancy by such of the proprietors of the estate under partition as were found to hold interests in the common land.

Procedure when dispute or doubt exists as to whether any land forms part of a parent estate.

88. (1) If a dispute or doubt is found to exist as to whether any land forms part of a parent estate, the Deputy Collector shall, after due notice to the parties interested inquire into the fact of possession and shall report his conclusions to the Collector; and thereupon the Collector shall dispose of the matter as follows:—

(a) he may order that the partition case be struck off the file, if such an order appears to him advisable, and whether the possession of the disputed land is with the proprietors of the parent estate or otherwise; or

(b) he may order that the partition shall proceed, and that the disputed land be treated as part of the estate under partition, if the possession of such land is with the proprietors of the parent estate and the claim of the other parties to the right in such land appears to him untenable; or

(c) he may order that the partition shall proceed, but that the disputed land shall not be treated as part of the estate under partition, if the possession of such land is with the other parties and the claim of the proprietors of the parent estate to the right in such land appears to him untenable:

Provided as follows:—

(i) if a claim to land alleged to be in dispute is filed after the Deputy Collector proceeds under section 57 to determine

(Secs. 89-90.)

how the lands of the parent estate shall be partitioned into the separate estates, the claim shall not be inquired into under this section unless the delay on the part of the claimant is explained to the satisfaction of the Deputy Collector;

- (ii) no partition shall be made in any case mentioned in this section if such partition would involve the assignment to any separate estate of such a quantity of the disputed land that the removal of such land from such estate at any subsequent time would, in the opinion of the Collector, endanger the safety of the land-revenue for which such estate would be liable after the partition.

(2) If a partition case is struck off the file under clause (a) of this section, no fresh application for partition shall be admitted unless and until the applicant shows that the dispute or doubt aforesaid has been decided by a Court of competent jurisdiction, or has been amicably settled; but if a fresh application is admitted, the proceedings shall be revived from the point at which they were interrupted.

89. If, after a partition has been completed in pursuance of an order passed by the Collector under section 88, clause (b), the proprietor of any separate estate is dispossessed by a decree of a Court of competent jurisdiction of any land which has been assigned to his estate by the partition, Procedure when partition completed in pursuance of order under section 88, clause (b), and proprietor of an estate dispossessed of any land by decree.

the partition shall not be disturbed, but such proprietor shall be entitled to recover from the proprietors of the other separate estates formed by the partition such compensation as may be fair and equitable, having regard to the reduction in the proportionate value of his separate estate which is caused by such dispossession;

and such compensation may be recovered in a Court of competent jurisdiction from the proprietors of those separate estates on which a proportionate share of the total loss caused by the dispossession does not fall.

CHAPTER X.

PROCEDURE BEFORE THE COMMISSIONER UP TO THE COMPLETION OF A PARTITION.

90. (1) If it appears to the Commissioner that the proceedings of the Collector should be amended, or if an appeal or objection is presented within the time allowed by section 61, the Commissioner shall, Procedure if proceedings require amendment

(Secs. 91-93.)

or if appeal
or objection
presented.

by order, fix a day (not being less than thirty days from the date of such order) for hearing and disposing of the case, and shall cause notice of such day to be served through the Collector on all the parties.

(2) On the day so fixed, or on any subsequent day to which the hearing of the case may extend or is postponed by a notice posted up in his own office the Commissioner shall, after hearing and disposing of all appeals and objections, and calling for any further information which he may consider necessary, either confirm the partition as approved or made by the Collector, with or without amendments, or return the papers of the partition to the Collector for any amendments which the Commissioner may think proper to be made.

(3) If the papers are returned to the Collector for amendment, the Collector shall proceed to make the required amendments or to cause them to be made in the same manner as if he had himself passed such orders on a partition submitted to him for approval by a Deputy Collector, and shall thereafter return the papers to the Commissioner, who may then confirm the partition.

Procedure in
other cases.

91. If it does not appear to the Commissioner that the proceedings of the Collector require amendment, or if no appeal or objection is presented within the time allowed by section 61, the Commissioner may proceed to consider the case without issuing any notice, and may confirm the partition as approved or made by the Collector.

Commissioner
may return
the papers
for amend-
ment or in-
quiry as
often as he
thinks fit.

92. The Commissioner may, before confirming a partition, return the papers for amendment or inquiry as often as he thinks fit, and as often as he so returns them the procedure prescribed in the foregoing sections of this Chapter shall be applicable.

Procedure by
Collector on
receipt of
Commis-
sioner's order
confirming,
or Board's
order sanc-
tioning, a
partition.

93. (1) After the expiration of not less than sixty days from the date of the order of the Commissioner confirming a partition, or if an appeal has been preferred to the Board, or if any proceedings in respect of the partition be pending before the Board, then on receipt of the final order of the Board, if such order does not set aside but maintains, with or without amendments, the partition as confirmed by the Commissioner,

the Collector shall cause to be published at his office, and at some conspicuous place in each of the estates separately constituted by the order of the Commissioner or the Board, as the case may be, a notice that the partition has been confirmed or sanctioned by the Commissioner or the Board, with or without amendments, as the case may be.

(2) If the partition as so confirmed or sanctioned involves any amendments which may conveniently be made on any extracts of the

(Secs. 94-96.)

partition paper or on any maps which have been prepared and delivered to recorded proprietors under section 59, the Collector shall cause a notice to be served on every recorded proprietor whose estate is affected by such amendments, requiring him to produce such extracts and maps in order that such amendments may be noted on them;

and, if the alterations made in the partition as so confirmed or sanctioned be such as to make it desirable to prepare fresh extracts or maps as aforesaid, the Collector shall cause such fresh extracts or maps to be prepared; and shall cause a notice to be served on each proprietor declaring the extract and map which was delivered under section 59 to be cancelled, and requiring him to take out of the Collector's office the fresh extract or map which has been prepared.

94. (1) The Collector shall then proceed to give the several proprietors possession of the separate estates allotted to them, and, if necessary, may require the assistance of the Magistrate in giving such possession;

Procedure as to giving possession of separate estates.

and shall cause to be served on every recorded proprietor of a separate estate a notice—

(a) informing him that from the date specified in such notice the separate estate assigned to him, as described in the extract from the partition paper prepared and delivered or tendered to him under section 59 or section 93, as the case may be, will be deemed to be separated from the parent estate, and to be separately liable for the amount of land-revenue specified in the notice, and

(b) calling upon him to enter into a separate engagement for the payment of such land-revenue.

(2) The date specified in such notice shall be not more than three months after the proprietors have been given possession of their respective separate estates as provided in sub-section (1).

95. From the date specified in such notice, each separate estate shall be borne on the revenue-roll and General Register of the Collector as a distinct estate separately liable for the amount of land-revenue assessed upon it under this Act, and shall be so liable whether or not the proprietor has entered into a separate engagement for the payment of the amount of land-revenue so assessed upon the estate.

Each separate estate to be borne on the revenue-roll and General Register as separately liable for the land-revenue assessed upon it. Boundary marks.

96. (1) The Collector may direct the erection of such boundary marks as he thinks proper, to distinguish the lands of each separate estate; and the cost of such boundary marks shall be deemed to be costs of the partition.

(Secs. 97-99.)

(2) Boundary marks so erected shall be assigned to *zamindars*, or to *zamindars* jointly with tenure-holders, for preservation, as provided in the third clause of section 29 of the Bengal Survey Act, 1875; [¹] and, after they have been so assigned, the provisions of sections 19, 20 and 52 to 57 (both inclusive) of the said Act shall apply in the case of such boundary marks. Ben. Act 5 of 1875.

CHAPTER XI.

MISCELLANEOUS.

Powers of Deputy Collector as to production of documents and attendance of witnesses.

97. For the purposes of any inquiry under this Act, the Deputy Collector shall, in addition to the powers specifically conferred upon him by this Act, have the powers conferred by Chapters X and XIV of the Code of Civil Procedure [²] for compelling the production of documents and enforcing the attendance of witnesses. 14 of 1882.

General power to refer to arbitration.

98. The Deputy Collector, with the consent of all the parties concerned, may refer to arbitration [³] any point arising in the course of a partition; and the provisions of sections 52, 53 and 54 shall, as far as possible, be applicable to such references.

Saving of tenures, leases and incumbrances.

99. If any proprietor of an estate held in common tenancy and brought under partition in accordance with this Act has given his share or a portion thereof in *patni* or other tenure or on lease, or has created any other incumbrance thereon, such tenure, lease or incumbrance shall hold good as regards the lands finally allotted to the share of such proprietor, and only as to such lands.

Illustrations.

I.—A, the proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a *patni* tenure of the whole of his interest in the estate entitling B, as long as such estate is held in common tenancy, to collect one-fourth of the rent payable by every *raiya*t on the estate; and partition of the said estate is made under this Act, and certain specific lands are assigned to A as his separate estate.

B will become *patnidar* of the entire separate estate which has been assigned to A, and will be entitled to collect the whole of the rents from the *raiya*ts on that estate.

II.—A, a proprietor of a quarter share in a joint-undivided estate held in common tenancy, gives to B a *patni* tenure of one-half of his share in the estate, entitling B, as long as such estate is held in common tenancy, to collect one-eighth of the rent payable by every *raiya*t on the estate; and

[¹] Printed in Vol. II of this Code.

[²] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to sections 30, 31 and 32 of, and Orders XI, XII, XIII and XVI in Schedule I to, that Code—see s. 158 thereof, in the General Acts, 1904-09, Ed. 1909, p. 184.

[³] As to arbitration, see the Indian Arbitration Act, 1899 (9 of 1899), in the General Acts, 1898-03, Ed. 1909, p. 459.

(Secs. 104-105.)

under-assessed estates to make refund to proprietors of over-assessed estates.

estate, he may direct that the proprietors whose estates are found to have been under-assessed shall, for each year during which they have held possession of the separate estates, be required to pay, to the recorded proprietors of the estates which have been over-assessed, a sum equal to the annual amount in which the latter are found to have been over-assessed; and in default of payment such sum shall be recoverable as provided in section 108.

(2) No order passed by the Lieutenant-Governor under sub-section (1) shall be liable to be contested in any Court.

104. Every notification required by this Act to be published shall, unless it is otherwise specially directed, be published by posting up copies of the same—

- (a) at the office of the Collector,
- (b) at the office of the Deputy Collector who is to make, is making or has made the partition,
- (c) at the village office or village offices, if any, of the proprietors of the parent estate, and
- (d) in one or more of the principal villages in the said estate.

105. (1) Any notice required by this Act to be served on any person may be served—

(a) by delivering the notice to the person to whom it is directed, or, on failure to effect such delivery, by posting it on some conspicuous part of the house in which the said person usually resides; or

(b) by sending a registered letter, containing the notice, to such person directed to the address, if any, which he has registered under this Act; or

(c) by delivering the notice to a general agent of the person to whom it is directed, or to any person who has been appointed in that behalf, or who has been appointed an agent of the person to whom the notice is directed for the general purposes of any partition under this Act; or

(d) by affixing a copy of the notice at the village office of the person to whom the notice is directed;

or, if no such village office be found, and if the notice cannot be served in any of the other modes mentioned in this section, by affixing a copy of the notice on some conspicuous place on the estate to which the notice relates.

(2) Where two or more persons are joint applicants for the separation of an estate to be held by them jointly as a separate estate, the service of a notice in any of the modes mentioned in sub-section (1), on any one of such joint applicants shall be deemed to be good and sufficient service on both or all of them.

Publication of notifications.

Service of notices.

(Secs. 106-110.)

106. If the directions of this Act are in substance and effect complied with, no proceedings thereunder shall be affected—

(a) by reason of any mistake or informality unless any person has suffered, or is in danger of suffering material injury in consequence of such mistake or informality; or

(b) by reason of the omission to publish any notification required by this Act, or to serve any notice on any person whose name is not recorded on the Collector's registers as proprietor of the estate in respect of which the notice is required by this Act to be served.

107. If any proprietor or other person fails to comply, within the time fixed therefor by notice, with any requisition made upon him under this Act by the Collector, or Deputy Collector, the Collector or Deputy Collector, as the case may be, may impose upon him such daily fine as he may think fit, not exceeding fifty rupees;

and such fine shall be payable daily until the requisition is complied with;

and the Collector or Deputy Collector, as the case may be, may proceed from time to time to levy the amount which has become due in respect of any such fine:

Provided that, whenever the amount payable exceeds five hundred rupees, the Collector shall report the case specially to the Commissioner, and no further levy in respect of the fine shall be made otherwise than by the authority of the Commissioner.

108. Except as herein otherwise expressly provided, all fees, fines, costs and other sums ordered under this Act to be paid by any person shall be deemed to be public demands, and shall be recoverable under the Public Demands Recovery Act, 1895.^[1]

109. All or any powers and functions which are assigned by this Act to a Deputy Collector may be exercised and discharged by the Collector;

and whenever it is provided by this Act that any act done or order made by a Deputy Collector shall require the sanction of the Collector, or shall be appealable to the Collector, then if such act has been done, or such order has been made, by the Collector, it shall be deemed to have been sanctioned by the Collector or to have been confirmed by the Collector in appeal, as the case may be.

110. (1) The Lieutenant-Governor may vest any Collector or Deputy Collector with all or any of the powers which, under the provisions of

^[1] Ben. Act 1 of 1895 has been repealed and re-enacted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 2, printed, *post*, p. 557, and this reference should now be construed as a reference to the latter Act—see the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 10, *post*, p. 146.

Mistakes and irregularities not to vitiate proceedings.

Fine in case of non-compliance with requisition.

Fees, etc., to be recoverable as public demands.

Powers and functions of Deputy Collector may be exercised by Collector.

Power to vest Collector or Deputy

(Secs. 111-112.)

Collector
with settle-
ment powers.

any law for the time being in force, might be exercised by them respectively, or might be conferred on them respectively, if they were making a settlement of a parent estate.

(12) Such powers may be conferred either generally in respect of all estates in the partition of which the Collector or Deputy Collector may at any time and in any district be engaged, or specially in respect of any particular estate.

Appeals to
the Collector
and admis-
sion by him
of objections.

111. (1) An appeal, if presented within one month from the date of the order appealed against, shall lie to the Collector against every order of a Deputy Collector—

(a) directing under section 39, by whom or how the costs of an inquiry held in consequence of an objection raised shall be paid;

(b) made under section 47, sub-section (3), declaring what entry in a record of existing rents and other assets of land shall be accepted for the purposes of the partition;

(c) made under section 50, adopting a record of existing rents and other assets of land;

(d) refusing, under section 51, to allow recorded proprietors to make a partition privately among themselves or by arbitration;

(e) rejecting under section 76, sub-section (3), an application for partition according to separate possession;

(f) directing, under section 81, sub-section (3), that a tenure or holding be split up, and that the rent thereof be apportioned; or

(g) imposing a fine under section 107.

(2) Objections to any other orders passed by the Deputy Collector shall only be admitted by the Collector if made when he proceeds to consider a partition under section 58.

Appeals to
the Commis-
sioner, and
admission by
him of ob-
jections.

112. (1) An appeal, if presented to the Commissioner, or to the Collector for transmission to the Commissioner, within one month from the date of the order appealed against, shall lie to the Commissioner against every order of a Collector (whether such order be passed by the Collector in the first instance or in appeal from the order of a Deputy Collector)—

(a) rejecting an application for the partition of an estate or for the separation of a share, or putting an end to proceedings for effecting a partition or separation after the application has been admitted;

(b) directing, under section 29, that an application for partition or separation be admitted;

(c) directing, under section 38, that any proprietor shall pay more than his proportionate share of the cost of a partition;

(d) made under section 50, adopting a record of existing rents and other assets of land;

(Secs. 113-114.)

(e) refusing, under section 55, to approve a partition made by proprietors or by an arbitrator or arbitrators;

(f) refusing to allow a partition to be made under section 76 in accordance with separate possession;

(g) directing, under section 85, that any sum exceeding five hundred rupees shall be levied from the proprietor of an estate not under partition;

(h) confirming, amending or rejecting, under section 86, an allotment made under section 84;

(i) made under section 88, when a dispute or doubt exists as to whether any land forms part of a parent estate;

(j) imposing or confirming the imposition of a fine under section 107; or

(k) imposing any fine amounting to more than fifty rupees, or directing the payment of any costs amounting to more than fifty rupees.

(2) Objections to any other orders passed by the Collector shall only be admitted by the Commissioner if made when he proceeds to consider a partition under section 90 or section 91.

113. An appeal, if presented to the Board^[1], or to the Commissioner for transmission to the Board^[1], within six weeks from the date the order appealed against, shall lie to the Board^[1] against every order of the Commissioner—

Appeals to the Board.

(a) confirming, modifying or reversing any order of the Collector rejecting an application for the partition of an estate, or putting an end to proceedings for effecting a partition after the application has been admitted;

(b) confirming, modifying or reversing any order of the Collector directing, under section 29, that an application for partition be admitted;

(c) confirming or amending a partition as approved or made by the Collector; or

(d) imposing, or confirming the imposition of, any fine amounting to five hundred rupees, or ordering or confirming an order directing the payment of any costs amounting to more than five hundred rupees.

114. (1) Except in the cases mentioned in section 113, when an order of a Collector, whether passed by him in the first instance or in appeal from the order of a Deputy Collector, is upheld by the Commissioner, no further appeal shall lie; but the Board^[1], acting either on the application of the party aggrieved or of their own motion, may call for the record of the case and pass such order as they think fit.

Limitation of appeals; revision by Board; further appeal to Board.

[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), *post*, p. 395.

(Secs. 115-118.)

(2) When an order of a Collector, whether passed by him in the first instance or in appeal from the order of a Deputy Collector, is modified or reversed by the Commissioner, a further appeal shall lie to the Board^[1] in the following cases only, namely, when the order of the Collector was one—

(a) directing, under section 38, that any proprietor shall, pay more than his proportionate share of the cost of a partition, when the excess which he is ordered to pay exceeds five hundred rupees;

(b) made under section 50, adopting a record of existing rents and other assets of land;

(c) directing, under section 85, that any sum exceeding five hundred rupees shall be levied from the proprietor of an estate not under partition; or

(d) confirming, amending or rejecting, under section 86, an allotment made under section 84.

Stay of proceedings pending appeal or revision.

115. When an appeal is presented under section 111, section 112 or section 113, or when the Board^[1] calls, under section 114, sub-section (1), for the record of a case, the proceedings shall not be stayed pending the appeal or revision unless the appellate or revising authority so directs.

Revision of proceedings connected with giving possession

116. (1) Any proceedings of a Deputy Collector, Collector or Commissioner connected with giving possession to the proprietors of their respective separate estates in pursuance of section 94 may be set aside or amended by the Collector, Commissioner or Board^[1], as the case may be, provided that the revising authority shall, within three months from the date on which such possession has been given, make an order to the effect that such proceedings are under its consideration.

(2) Every such order shall, when made by the Commissioner or the Board^[1], be communicated to the Collector of the district, and the Collector shall cause all such orders to be published by notification.

Orders as to costs on appeal.

117. The Collector, the Commissioner and the Board^[1] respectively may pass such orders as they think fit in respect of the payment of the costs of any appeal which is made to them respectively under this Act.

Powers of officers exercising jurisdiction under this Act with regard to false evidence, or forgery.

118. If, in any case in which a Collector or other officer exercises jurisdiction under this Act, any person is guilty of the offence of giving or fabricating false evidence, or of forgery, as defined in the Indian Penal Code,^[2] or of abetting any of those offences, such Collector or other officer shall have the same powers in respect of such offence, and

^[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), *post*, p. 385.

^[2] Printed in the General Acts, 1834-67, Ed. 1909, p. 248.

(Secs. 119-121.)

10 of 1892.

of the person charged with committing the same as are vested by the Code of Criminal Procedure, 1882,^[1] in a Civil Court when any such offence is committed before or against such Court, or when a document believed to be a forgery is given in evidence in any proceedings in such Court.

119. No order—

(a) refusing to admit an application for partition, or to carry out a partition, on any of the grounds mentioned in section 11; or

(b) made under section 20, section 30, Chapter V, Chapter VII, Chapter VIII, Chapter IX (except section 81), Chapter X, section 107 or section 117,

shall be liable to be contested or set aside by suit in any Court, or by any means other than those expressly provided in this Act:—

Provided that—

(i) any person claiming a greater interest in lands which were held in common tenancy between two or more estates than has been allotted to him by an order under section 84 or section 86; or

(ii) any person who is aggrieved by an order made under section 88, may bring a suit in a Court of competent jurisdiction to modify or set aside such order.

120. In the execution of the duties imposed on the Board^[2] by this Act, the Board^[2] shall be guided by such orders or instructions as they may from time to time receive from the Lieutenant-Governor.

121. The Board^[2] may from time to time, with the previous sanction of the Lieutenant-Governor make rules,^[3]

(a) prescribing, in pursuance of section 18, clause (g), particulars to be contained in applications for partition;

(b) for regulating the appointment of persons under section 35 and the scale of their remuneration, and for enabling an officer making a partition to keep himself informed of the proceedings of such persons and to exercise a proper control over them;

(c) for determining the costs of partitions;

(d) for fixing, for the purposes of section 37, the instalments in which and the times at which the cost of making partition shall be levied from proprietors;

[1] Act 10 of 1892 has been repealed and re-enacted by the Code of Criminal Procedure, 1909 (5 of 1909) and this reference should now be taken to be made to that Code—see s. 3.

[2] A and Oris.

[3] F Bihar an

Certain orders under this Act not liable to be contested or set aside by civil suit.

Board to be guided by order or instructions of Lieutenant-Governor. Power of Board to make rules.

venue, see the Bihar st. p. 385. and Orissa, see the

(Sec. 121.)

(e) for fixing a general scale of fees for the levy of charges from proprietors of estates under partition, when the formation of an Estates Partition Fund has been directed under section 42;

(f) for fixing the instalments in which and the times at which the said fees shall be levied from proprietors;

(g) generally, for regulating the receipts, disbursements and management of any Estates Partition Fund formed under the said section 42;

(h) prescribing what entries in the record of existing rents and other assets shall be read out and, when necessary, corrected or added to, under section 47, sub-section (2);

(i) prescribing the manner in which and the period for which copies of survey papers and records of existing rents and other assets shall be published under section 48;

(j) prescribing the entries in survey papers or records of existing rents and other assets of which copies shall be furnished to landlords and tenants under the said section 48;

(k) prescribing the form of partition papers to be delivered under section 53 or prepared under section 57; and

(l) generally, for the guidance of officers in conducting partitions or making a survey and preparing a record of existing rents and other assets of land under this Act.

[THE BENGAL TENANCY (AMENDMENT) ACT, 1893].

CONTENTS.

SECTION.

1. Short title.
2. *(Commencement). Repealed.*
3. Amendment of Act 8, 1885, section 30.
4. Amendment of Act 8, 1885, section 31.
5. Insertion of sections 31 A and 31 B in Act 8, 1885.
6. Amendment of Act 8, 1885, section 39 (c)
7. Amendment of Act 8, 1885, section 52.
8. New Chapter X for Act 8, 1885.
9. Validation of publication of past records.
10. Effect of settlements of rent and decisions by Revenue-officers made before the commencement of this Act.
11. Amendment of Act 8, 1885, section 119.
12. *(Repealed.)*

BENGAL ACT 3 OF 1898.

[THE BENGAL TENANCY (AMENDMENT) ACT, 1898.][¹]

(2nd November, 1898.)

An Act to amend sections 30, 31, 39, 52 and 119 and Chapter X of the Bengal Tenancy Act, 1885.[²]

Whereas it is expedient to amend sections 30, 31, 39, 52 and 119 and Chapter X of the Bengal Tenancy Act, 1885,[²] in the manner hereinafter appearing;

8 of 1885. And whereas, the said Act having been passed by the Governor General of India in Council, the previous sanction of the Governor General has been obtained, under section 5[³] of the Indian Councils Act, 1892, to the requisite amendments being made by an Act of the Lieutenant-Governor of Bengal in Council;

55 & 56
Vict., c. 14.

7 of 1870. And whereas the sanction of the Governor General has similarly been obtained to the amendment of the Court-fees Act, 1870,[⁴] which is proposed by section 7 (105) of this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Tenancy (Amendment) Short title. Act, 1898;

(Commencement.) Rep. by the Amending Act, 1903 (1 of 1903).

8 of 1885. 2. For clause (a) of section 30 of the Bengal Tenancy Act, 1885,[²] Amendment of Act 8, 1885, section 30. the following shall be substituted, namely:—

(a) [Printed in Vol. I of this Code.]

3. After clause (d) of section 31 of the said Act[²] the following Amendment of Act 8, 1885, section 31. shall be inserted, namely:—

(e), (f) [Printed in Vol. I of this Code.]

[¹] LEGISLATIVE PAPERS.—For Statements of Objects and Reasons, see Calcutta Gazette, 1897, Pt. IV, p. 107; for Report of Select Committee, see *ibid*, 1898, Pt. IV, p. 515; and for Proceedings in Council, see *ibid*, 1897, Supplement, pp. 1213, 1688, *ibid*, 1898, Supplement, pp. 529, 670 and 762.

LOCAL EXTENT.—Since this Act merely amends the Bengal Tenancy Act, 1885 (8 of 1885, printed in Vol. I of this Code), its local extent must be taken to be the same as that of the latter Act.

The application of the Act is barred in—

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I, p. 864, and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 777.

[²] Printed in Vol. I of this Code.

[³] Printed in the Collection of Statutes relating to India, 1913, Vol. II, p. 804

[⁴] Printed in the General Acts, 1868-78, Ed. 1909, p. 102.

[⁵] The Bengal Tenancy Act, 1885. It is printed in Vol. I of this Code.

(Secs. 4-11.)

Insertion of sections 31A and 31B in Act 8, 1885.

4. After section 31 of the said Act^[1] the following shall be inserted, namely:—

31A, 31B. [Printed in Vol. I of this Code.]

Amendment of Act 8, 1885, section 39 (b).

5. After the word “correct,” in sub-section (6) of section 39 of the said Act,^[1] the words “and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct” shall be inserted.

Amendment of Act 8, 1885, section 52.

6. To section 52 of the said Act^[1] the following shall be added, namely:—

(5) [Printed in Vol. I of this Code.]

New chapter X for Act 8, 1885.

7. For Chapter X of the said Act^[1] the following shall be substituted, namely:—

Ch. X [Printed in Vol. I of this Code.]

Validation of publication of past records.

8. All records published under section 105 of the Bengal Tenancy Act, 1885,^[2] before the commencement of this Act, whether in draft or in final form shall be deemed to have been duly published.

Effect of settlements of rent and decisions by Revenue-officers made before the commencement of this Act.

9. (1) Every settlement of rent or decision of a dispute by a Revenue-officer under section 104 or section 106 of the Bengal Tenancy Act, 1885,^[2] before the commencement of this Act, in respect of which no appeal has, before the commencement of this Act, been preferred to the Special Judge appointed under section 108 of that Act, shall have the force and effect of a decree of a Civil Court in a suit between the parties, and shall be final:

Provided that an appeal shall lie to the District Judge from any such settlement or decision which was made or given within thirty days before the commencement of this Act, if the appeal be presented within thirty days from the date of such settlement or decision.

(2) The provisions of the Code of Civil Procedure^[3] relating to appeals shall, as nearly as may be, apply to all such appeals.

Amendment of Act 8, 1885, section 119.

10. In section 119 of the Bengal Tenancy Act, 1885^[2] the words and figures “sections 103 A, 103 B, 106, 107, 108, 109 and 109 A” shall be substituted for the words and figures “sections 105 to 109, both inclusive.”

11. (*Repeal of Bengal Act 5, 1894.* Rep. by the Amending Act, 1903 (1 of 1903).)

^[1] The Bengal Tenancy Act, 1885. It is printed in Vol. I of this Code.

^[2] Printed in Vol. I of this Code.

^[3] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code—see s. 158 thereof, in the General Acts, 1904-09, Ed. 1909, p. 184.

BENGAL ACT 1 of 1899.

(THE BENGAL GENERAL CLAUSES ACT, 1899).

CONTENTS.

PRELIMINARY.

SECTION.

1. Short title.
2. (*Repealed.*)

GENERAL DEFINITIONS.

3. Definitions.
4. Application of certain of the foregoing definitions to previous Bengal Acts.
5. Continuance of certain definitions for purposes of previous Bengal Acts.

GENERAL RULES OF CONSTRUCTION.

6. Coming into operation of Bengal Acts.
7. Printing of date on which Act is published after having received the assent of the Governor General.
8. Effect of repeal.
9. Revival of repealed enactments.
10. Construction of references to repealed enactments.
11. Commencement and termination of time.
12. Computation of time.
13. Measurement of distances.
14. Gender and number.

POWERS AND FUNCTIONARIES

15. Powers conferred on the Government to be exercisable from time to time.
16. Power to appoint to include power to appoint *ex officio*.
17. Power to appoint to include power to suspend or dismiss.
18. Substitution of functionaries.
19. Successors.
20. Official chiefs and subordinates.

PROVISIONS AS TO ORDERS, RULES, ETC., MADE UNDER ENACTMENTS.

21. Construction of orders, etc., issued under Bengal Acts.
22. Power to make to include power to add to, amend, vary or rescind, orders, etc.
23. Making of rules or by-laws and issuing of orders between publication and commencement of Bengal Act.
24. Provisions applicable to making of rules or by-laws after previous publication.
25. Continuation of orders, etc., issued under enactments repealed and re-enacted.

MISCELLANEOUS.

26. Recovery of fines.
27. Provision as to offences punishable under two or more enactments.
28. Meaning of service by post.
29. Citation of enactments.
30. Saving for previous Acts, rules and by-laws.

BENGAL ACT 1 OF 1899.

(THE BENGAL GENERAL CLAUSES ACT, 1899.)[1]

(18th January, 1899.)

An Act for further shortening the language used in Bengal Acts, and for other purposes.

Whereas it is expedient further to shorten the language used in Bengal Acts, and to make certain other provisions relating to those Acts;

It is hereby enacted as follows:

PRELIMINARY.

1. This Act may be called the Bengal General Clauses Act, 1899. Short title.

2. (*Repeal of Bengal Act 5 of 1867*). *Rep. by the Amending Act, 1903 (1 of 1903).*

[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1898, Pt. IV, p. 570, and for Proceedings in Council, see *ibid*, Supplement, pp. 1426, 1428, 1579 and 2538.

LOCAL EXTENT.—Since this Act has no "local extent" clause, it must be taken originally to have extended to the whole of the former Province of Bengal, including the de-regulationised tracts.

It is in force in—

the Angul District, see Vol. IV, Part 4; and the Sonthal Parganas, see Vol. IV, Part 3

OTHER SIMILAR ACTS.—This Act closely follows the General Clauses Act, 1897 (10 of 1897), passed by the Governor General in Council (printed in the General Acts, 1897-97, Ed. 1909, p. 571), and some of its clauses are based on clauses of the Interpretation Act, 1889 (52 & 53 Vict., c. 63), printed in the Collection of Statutes relating to India, 1913, Vol. II, p. 761. Similar Acts have been passed by other Legislative Councils in India, viz., Madras Acts 1 of 1867 and 1 of 1891, Bombay Act 1 of 1904, Eastern Bengal and Assam Act 1 of 1909, United Provinces Act 1 of 1904, Punjab Act 1 of 1898, Burma Act 1 of 1898.

APPLICATION OF THE VARIOUS GENERAL CLAUSES ACTS.—The General Clauses Act, 1897, applies, for the most part, only to Acts of the Governor General in Council and to Regulations made under the Government of India Act, 1870 (33 & 34 Vict., c. 3) printed in the Collection of Statutes relating to India, 1913, Vol. I, p. 423; but s. 12 applies also to Indian enactments of all kinds, including, among others, Bengal Acts. The section runs as follows:—

"12. Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity."

The Bengal General Clauses Act, 1899, is expressed, in every section except ss. 27 and 30, to apply only to Bengal Acts.

The Interpretation Act, 1889, applies only to Acts of Parliament.

The Acts of the Madras, Bombay, United Provinces, Punjab and Burma Councils have effect only in the Provinces in which they were respectively passed.

(Sec. 3.)

GENERAL DEFINITIONS.

Definitions.

3. In this Act, and in all Bengal Acts made after the commencement of this Act,^[1] unless there is anything repugnant in the subject or context,—

- "Abet." (1) "abet," with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code;^[2] 45 of 1860.
- "Act." (2)^[3] "act," used with reference to an offence or a civil wrong, shall include a series of acts; and words which refer to acts done shall extend also to illegal omissions;
- "Affidavit." (3)^[4] "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;
- "Barrister." (4)^[5] "barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland;
- "Bengal." (5) "Bengal" shall mean the territories within British India for the time being under the administration of the Lieutenant-Governor of Bengal;^[6]
- "Bengal Act." (6)^[7] "Bengal Act" shall mean an Act made by the Lieutenant-Governor of Bengal in Council under ^[8]the Indian

[1] Some of the definitions in this section apply also to Bengal Acts made between the 1st June, 1867, and the commencement of the present Act—see s. 4, *post*, p. 145. For two further definitions applying to such Acts, see s. 5, *post*, p. 145.

[2] See Act 45 of 1860, ss. 107, 108 and 108A, in the General Acts, 1834-67, Ed. 1909, pp. 272, 274.

[3] *Cf.* s. 33 of the Indian Penal Code (Act 45 of 1860), in the General Acts, 1834-67, Ed. 1909, p. 255.

[4] *Cf.* the definitions of "oath" and "swear" in clauses (29) and (44), *post*, pp. 133 and 134.

For the law relating to judicial oaths, affirmations and declarations, see the Indian Oaths Act, 1873 (10 of 1873), in the General Acts, 1868-78, Ed. 1909, p. 385.

As to affidavits to be used before Civil Courts, see also s. 139 of and rules 1 to 3 in Order XIX in Sch. I to the Code of Civil Procedure (Act 5 of 1908) in General Acts, 1904-09, Ed. 1909, pp. 182 and 250.

As to affidavits to be used before a High Court in criminal matters, see also s. 539 of the Code of Criminal Procedure, 1898 (5 of 1898), in the General Acts, 1898-03, Ed. 1909, p. 207.

[5] For a similar definition, see the Indian High Courts Act, 1861 (24 & 25 Vict., c. 104), s. 19, printed in the Collection of Statutes relating to India, 1913, Vol. I, p. 329.

[6] This includes the present Province of Bihar and Orissa.

[7] A similar definition is given in clause (5) of section 3 of the General Clauses Act, 1897 (10 of 1897), printed in the General Acts, 1887-97, Ed. 1909, p. 572. The definition was inserted in order to introduce a uniform method of citing Acts of the Bengal Council and to suggest the abandonment of the various other methods formerly adopted, e.g., "Act (B. C.) of 1869," "Act 1 of 1869 passed by the Lieutenant-Governor of Bengal in Council." The method of citation most commonly adopted was "Act 1 (B. C.) of 1869," but the abbreviation of "(B. C.)" is peculiarly inappropriate, inasmuch as it would stand equally well for Acts of the Bombay or Burma Council, and is the recognized abbreviation for Before Christ.

[8] These words and figures in square brackets in s. 3 (6) were inserted by the Amending Act, 1903 (1 of 1903), Sch. II—see Vol. I of this Code.

(Sec. 3.)

Councils Act, 1861;—or] the Indian Councils Acts, 1861^[1] and 1892.^[2]

- (7) “Chapter” shall mean a Chapter of the Act in which the “Chapter” word occurs;
- (8) “Collector” shall mean, in Calcutta, the Collector of Calcutta, “Collector.” and elsewhere the chief officer in charge of the revenue administration of a district;
- (9) ^[3] “commencement,” used with reference to an Act, shall “Commence-
ment.” mean the day on which the Act comes into force;
- (10) “Commissioner” shall mean the chief officer in charge of the “Commis-
sioner.” revenue administration of a division;
- (11) ^[4] “Consular officer” shall include consul-general, consul, “Consular
vice-consul, consular agent, pro-consul and any person for officer.” the time being authorized to perform the duties of consul-general, consul, vice-consul or consular agent;
- (12) “District Judge” shall mean the Judge of a principal Civil “District
Court of original jurisdiction, but shall not include a High Judge.” Court in the exercise of its ordinary or extraordinary original civil jurisdiction;
- (13) ^[5] “document” shall include any matter written, ^[6] “Docu-
expressed or described upon any substance by means of ment.” letters, figures or marks or by more than one of those means, which is intended to be used or which may be used, for the purpose of recording that matter;
- (14) “enactment” shall include a Regulation (as hereinafter^[7] “Enact-
defined) and any Regulation of the Bengal Code, and shall ment” also include any provision contained in any Act or in any such Regulation as aforesaid;

[1] Printed in the Collection of Statutes relating to India, 1913, Vol. I, p. 313.

[2] Printed in the Collection of Statutes relating to India, 1913, Vol. II, p. 803.

(54 & 55 Vict.,

[3] For similar definitions, see the Indian Penal Code (Act 45 of 1860), s. 29, in the General Acts, 1834-67, Ed. 1909, p. 255, and the Indian Evidence Act, 1872 (1 of 1872), s. 3, in the General Acts, 1868-78, Ed. 1909, p. 201.

[4] As to construction of expressions referring to writing, see clause (47) of this section, *post*, p. 144.

[5] See clause (35) of this section, *post*, p. 144.

(Sec. 3.)

- "Father." (15) "father," in the case of anyone whose personal law permits adoption, shall include an adoptive father;
- "Financial year." (16) "financial year" shall mean the year commencing on the first day of April;
- "Good faith." (17) [1] a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;
- "Government." (18) "Government" or "the Government" shall include the Local Government[2] as well as the Government of India;
- "Government of India." (19) "Government of India" shall mean the Governor General in Council or, during the absence of the Governor General from his Council, the President in Council, or the Governor General alone, as regards the powers which may be lawfully exercised by them or him respectively;
- "Her Majesty" or "the Queen." (20) [3] "Her Majesty" or "the Queen" shall include her successors.
- "Immovable property." (21) [4] "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;
- "Imprisonment." (22) "imprisonment" shall mean imprisonment of either description[5] as defined in the Indian Penal Code;
- "Local authority." (23) [6] "local authority" shall mean a Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

45 of 1860.

[1] For a similar definition, see the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61), s. 90, and the Sale of Goods Act, 1893 (55 & 56 Vict., c. 71), s. 62 (2).

For discussion in His Excellency the Viceroy's Council upon the similar definition of "good faith" contained in clause (20) of section 3 of the General Clauses Act, 1897, see Gazette of India, March, 1897, Pt. VI, pp. 55 to 62 and 76 to 79.

The definition in the present Act differs from the definition "of good faith" contained in s. 52 of the Indian Penal Code (Act 45 of 1860—printed in General Acts, 1834-67, Ed. 1909, p. 258).

[2] For definition of "Local Government," see clause (24) of this section, *post*, p. 143.

[3] As to His Majesty's title as Emperor of India, see the Royal Titles Act, 1901 (1 Edw. 7, c. 15), and Proclamation published in Gazette of India, 1901, Pt. I, p. 994.

[4] The expression "immovable property" is defined differently in the Indian Registration Act, 1908, s. 2 (6), printed in the General Acts, 1904-09, Ed. 1909, p. 560. For a definition of "land," applicable to Bengal Acts made between the 1st June, 1867, and the 18th January, 1899, see s. 5, *post*, p. 145.

[5] *i.e.*, rigorous or simple, see s. 53 of Act 45 of 1860, in the General Acts, 1834-67, Ed. 1909, p. 258.

[6] For a very similar definition, see the Local Authorities Loans Act, 1914 (9 of 1914), s. 2.

(Sec. 3.)

- (24) "Local Government" shall mean the Lieutenant-Governor of "Local Bengal; [1]
- (25) "Magistrate" shall include every person exercising all or any "Magis- of the powers of a Magistrate under the Code of Criminal Procedure [2] for the time being in force;
- (26) [3] "master" used with reference to a ship, shall mean any "Master" person (except a pilot or harbour-master) having for the (of a ship) time being control or charge of the ship;
- (27) "month" shall mean a month reckoned according to the "Month." British calendar;
- (28) "movable property" [4] shall mean property of every descrip- "Movable tion, except immovable property; property."
- (29) "oath" shall include affirmation and declaration in the case "Oath." of persons by law allowed to affirm or declare instead of swearing; [5]
- (30) [6] "offence" shall mean any act or omission made punishable "Offence." by any law for the time being in force;
- (31) "Part" shall mean a part of the Act in which the word occurs; "Part."
- (32) [7] "person" shall include any company or association or body "Person." of individuals, whether incorporated or not;
- (33) "public nuisance" shall mean a public nuisance as defined in "Public the Indian Penal Code; [8] nuisance."
- (34) "registered," used with reference to a document, shall mean "Regis- registered in British India under the law [9] for the time tered." being in force for the registration of documents;
- (35) "Regulation" shall mean a Regulation made under the Gov- "Regula- ernment of India Act, 1870; [10] tion."

[1] Now the Lieutenant-Governor in Council of Bihar and Orissa, see the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (7 of 1912), s. 3, and Sch. D, item 1, in Vol. I of this Code.

[2] The Code now in force is Act 5 of 1893, printed in the General Acts, 1893-1903, Ed. 1903, p. 38.

[3] The Bengal Bankruptcy Act, 1893 (57 & 58 Vict., c. 60), p. 1056

169 of the Bankruptcy

the foot-notes thereto.
1 Procedure, 1893 (5 of

[4] For a different definition of "person," applicable to Bengal Acts made between the 1st June, 1867, and the 18th January, 1893, see s. 5, *post*, p. 145.

[5] See Act 45 of 1860, s. 260, in the General Acts, 1834-67, Ed. 1903, p. 316. For procedure in dealing with public nuisances, see Ch. X of the Code of Criminal Procedure, 1893, printed in the General Acts, 1893-03, Ed. 1903, p. 84.

[6] See the Indian Registration Act, 1908 (16 of 1908), in the General Acts, 1904-03, Ed. 1903, p. 560.

[7] Printed in the Collection of Statutes relating to India, 1913, Vol. I, p. 423.

5 of 1893.

45 of 1860.

16 of 1908.

33 & 34
Vict., c. 3.

(Sec. 3.)

- "Rule." (36) [1] "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment;
- "Schedule." (37) "Schedule" shall mean a schedule to the Act in which the word occurs;
- "Scheduled District." (38) "Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874; [2] 14 of 1874.
- "Section." (39) "section" shall mean a section of the Act in which the word occurs;
- "Ship." (40) [3] "ship" shall include every description of vessel [4] used in navigation not exclusively propelled by oars;
- "Sign." (41) "sign," with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions;
- "Son." (42) "son," in the case of anyone whose personal law permits adoption, shall include an adopted son;
- "Sub-section." (43) "sub-section" shall mean a sub-section of the section in which the word occurs;
- "Swear." (44) [5] "swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;
- "Vessel." (45) [6] "vessel" shall include any ship [7] or boat or any other description of vessel used in navigation;
- "Will." (46) [8] "will" shall include a codicil and every writing making a voluntary posthumous disposition of property;
- "Writing." (47) expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form; and

[1] For provisions as to rules, see ss. 21 to 26, 29 and 30, *post*.

[2] Printed in the General Acts, 1868-78, Ed. 1909, p. 441.

[3] For a similar definition, see the Merchant Shipping Act, 1894 (57 and 58 Vict., c. 60), s. 742, in the Collection of Statutes relating to India, 1913, Vol. II, p. 1056.

[4] For definition of "vessel," see clause (45) of this section.

[5] Cf. the definition of "affidavit" in clause (3), *ante*, and see the foot-notes thereto.

[6] For a similar definition, see the Merchant Shipping Act, 1894 (57 and 58 Vict., c. 60), s. 742, in the Collection of Statutes relating to India, Vol. II, Ed. 1913, p. 1056.

The word "vessel," is differently defined in the Indian Penal Code (Act 45 of 1860), s. 48, printed in the General Acts, 1834-67, Ed. 1909, p. 258.

[7] For definition of "ship," see clause (40) of this section.

[8] The word "will" is differently defined in the Indian Succession Act, 1865 (10 of 1865), s. 3, printed in the General Acts, 1834-67, Ed. 1909, p. 474.

(Secs. 4-8.)

- (48) "year" shall mean a year reckoned according to the British "Year." calendar.[¹]

4. The definitions in section 3 of the following words, that is to say, "affidavit," "Magistrate," "mortgage," "oath," and "swear," apply also, unless there is anything repugnant in the subject or context, to all Bengal Acts made between the first day of June, 1867, and the commencement of this Act.

Application of certain of the foregoing definitions to previous Bengal Acts.

5. In all Bengal Acts made between the first day of June, 1867, and the commencement of this Act, unless there is anything repugnant in the subject or context,—

Continuance of certain definitions for purposes of previous Bengal Acts.

- (1) "land" includes houses and buildings and corporeal hereditaments and tenements of any tenure, unless where there are words to exclude houses and buildings or to restrict the meaning to tenements of some particular tenure; and
- (2) "person" includes any incorporated company or incorporated association of persons.

GENERAL RULES OF CONSTRUCTION.

6. (1) Where any Bengal Act is not expressed to come into operation on a particular day,^[2] then it shall come into operation on the day on which it is first ^[3] published in the Calcutta Gazette, after having received the assent of the Governor General.

Coming into operation of Bengal Acts.

(2) Unless the contrary is expressed, a Bengal Act shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

7. In this Act, and in every Bengal Act made after the commencement of this Act, the date of such publication as is mentioned in section 6, sub-section (1), shall be printed above the title of the Act, and shall form part of the Act.

Printing of date on which Act is published after having received the assent of the Governor General.

8. Where this Act, or any Bengal Act made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

Effect of repeal.

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or

1. *matte*
the
the
relating to India, Vol. I, Ed. 1913, p. 323.

2. clause (16), *ante*, p. 142.
3. or to issue orders, with respect to certain enactments of a Bengal Act, *see* s. 23, *post*.
4. see times in the Calcutta Gazette, but since once. Publication is prescribed by s. 40 of c. 67, printed in the Collection of Statutes

- (b) affect the previous operation of any enactment so repealed or anything duly done^[1] or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability^[1] acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy, in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

Revival of
repealed
enactments.

9. (1) In any Bengal Act made after the commencement of this Act it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all Bengal Acts made between the first day of June, 1867, and the commencement of this Act.

Construction
of references
to repealed
enactments.

10. Where this Act, or any Bengal Act made after the commencement of this Act, repeals and re-enacts with or without modifications, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Commence-
ment and
termination
of time.

11. In any Bengal Act made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from," and, for the purpose of including the last in a series of days on any other period of time, to use the word "to."

Computation
of time.

12. Where, by any Bengal Act made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

[1] As to the continuance of orders, etc., made under an enactment which is repealed and re-enacted, see s. 25, *post*, p. 149.

(Secs. 13-19.)

15 of 1877. Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877,^[1] applies.

13. In the measurement of any distance for the purposes of any Bengal Act made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane. Measurement of distances.

14. In all Bengal Acts, unless there is anything repugnant in the subject or context,— Gender and number.

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and *vice versa*.

POWERS AND FUNCTIONARIES.

15. Where, by any Bengal Act made after the commencement of this Act, any power is conferred on the Government, then that power may be exercised from time to time as occasion requires. Powers conferred on the Government to be exercisable from time to time.

16. Where, by any Bengal Act, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office. Power to appoint to include power to appoint *ex officio*.

17. ^[2] Where, by any Bengal Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power. Power to appoint to include power to suspend or dismiss.

18. In any Bengal Act made after the commencement of this Act it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed. Substitution of functionaries.

19. In any Bengal Act made after the commencement of this Act it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations. Successors.

^[1] Act 15 of 1877 has been repealed and re-enacted by the Indian Limitation Act, 1908 (9 of 1908), printed in the General Acts, 1904-09, Ed. 1909, p. 476, and this reference should now be construed as a reference to the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in the General Acts, 1887-97, Ed. 1909, p. 579.

^[2] As to section 17, see the Notes on Clauses appended to the Statement of Objects and Reasons, in Calcutta Gazette, 1893, Pt. IV, p. 571.

(Secs. 25-27.)

previous publication so requires, in such manner as the Local Government prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or by-laws, and, where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified;

(5) the publication in the Calcutta Gazette of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

25. Where any enactment is, after the commencement of this Act, repealed and re-enacted by a Bengal Act with or without modification, then, unless it is otherwise expressly provided, any [1][appointment], order, scheme, rule, by-law, notification or form [2][made or] issued under the repealed enactment shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been [2][made or] issued under the provisions so re-enacted, unless and until it is superseded by any [1][appointment], order, scheme, rule, by-law, notification or form [2][made or] issued under the provisions so re-enacted.

MISCELLANEOUS.

26. Sections 63 to 70 of the Indian Penal Code, [3] and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines [4] shall apply to all fines imposed under any Bengal Act or any rule or by law made under any Bengal Act, unless the Act, rule or by-law contains an express provision to the contrary.

27. Where an act or omission constitutes an offence [5] under two or more enactments, then the offender shall be liable to be prosecuted and

[1] The word "appointment" in s. 25 was inserted by the Repealing and Amending Act, 1903 (1 of 1903), Sch. II—see Vol. I of this Code.

[2] The words "made or" in s. 25 were inserted by the same Act.

[3] Printed in the General Acts, 1834-67, Ed. 1909, pp. 260-262.

[4] See ss. 386 to 389 of Act 5 of 1898, in the General Acts, 1898-03, Ed. 1909, pp. 160,

161.

[5] For definition of "offence," see s. 3 (50), ante, p. 143.

(Secs. 28-30.)

under two or more enactments.

Meaning of service by post.

Citation of enactments.

Saving for previous Acts, rules and by-laws.

punished, under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

28. Where any Bengal Act made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

29. (1) In any Bengal Act, and in any rule, by-law, instrument or document made under, or with reference to any Bengal Act, any enactment may be cited by reference to the title or short title (if any)^[1] conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or subsection of the enactment in which the provision is contained.

(2) In this Act, and in any Bengal Act made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

30. Where any Act, rule or by-law made after the commencement of this Act continues or amends any Acts, rules or by-laws made before the commencement of this Act, the foregoing sections of this Act shall not by reason merely of such continuance or amendment affect the construction of such Acts, rules or by-laws.

[¹] Short titles have been conferred on all the enactments printed in this Code.

BENGAL ACT 2 OF 1899.

(THE BENGAL CIVIL COURT AMINS ACT, 1899.)[¹]

(25th October, 1899.)

**An Act to repeal Civil Courts Amins Act, 1856,
in Bengal.**

12 of 1856.

Whereas it is expedient to repeal the Civil Courts Amins Act, 1856, so far as it applies to Bengal;

It is hereby enacted as follows:—

I. The Civil Courts Amins Act, 1856[¹] is hereby repealed through-
out Bengal:

Repeal of
Act 12 of
1856.

Provided as follows:—

(a) this repeal shall not affect any appointment already made under the said Act, and

(b) the persons holding such appointments shall perform such duties as may be required of them by the District Judge.

[¹] SHORT TITLE.—This short title was given by the Repealing and Amending Act, 1903 (1 of 1903), Sch. Amending Act, 1903—*vide* Act

LEGISLATIVE F
1899, Pt. IV, p. 61
1907; *ibid* January. Gazette, pp. 1560,

LOCAL EXTENT.—This Act is expressed to apply to the whole of the former Province of Bengal.

The application of the Act is barred in—

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2) printed in Vol. I, p. 864; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 777.

BENGAL ACT 3 OF 1900.

(THE BENGAL CRUELTY TO ANIMALS ACT, 1900.)^[1]

(9th May, 1900.)

An Act to amend Bengal Act 1 of 1869^[2] (an Act for the prevention of cruelty to animals.)

Whereas it is expedient to amend Bengal Act 1 of 1869^[2] (*an Act for the prevention of cruelty to animals*);

It is hereby enacted as follows:—

1. For section 1 of Bengal Act 1 of 1869^[2] (*an Act for the prevention of cruelty to animals*) the following shall be substituted, namely:—

[Printed in Vol. II of this Code.]

Amendment of section 1 of Bengal Act 1 of 1869.

2. For section 5 of the said Act^[2] the following shall be substituted, namely:—

5 to 5C. [Printed in Vol. II of this Code.]

Amendment of section 5 of Bengal Act 1 of 1869.

3. (1) This Act may be called the Bengal Cruelty to Animals Act, 1900.

Short titles.

(2) This Act, the aforesaid Bengal Act 1 of 1869,^[2] and Bengal Act 3 of 1869^[2] (*an Act to enable Police-officers to arrest without warrant persons guilty of cruelty to animals*) may be cited together as the Bengal Cruelty to Animals Acts, 1869 to 1900.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1900, Pt. IV, p. 2; and for Proceedings in Council, see *ibid*, January, 1900, Special Supplement, p. 555; February, 1900, pp. 7, 11, 41 and 68.

LOCAL EXTENT.—The local extent of this Act is the same as that of Bengal Act 1 of 1869, printed in Vol. II of this Code.

The application of the Act is barred in—

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (3) printed in Vol. I, p. 864; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 777.

^[2] The Bengal Cruelty to Animals Act, 1869. It is printed in Vol. II of this Code.

^[3] The Bengal Cruelty to Animals (Arrest) Act, 1869. It is printed in Vol. II of this Code.

[THE BENGAL DRAINAGE (AMENDMENT) ACT, 1902.]

SECTION.

1. Short title.

AMENDMENT OF THE BENGAL DRAINAGE ACT, 1850.

- 2 Amendment of section 3, Bengal Act 6 of 1880.
3. " " " " " " " " new section 26A.
4. " " " " " " " "
5. " " " " " " " " 30, 31, 38 and 42 to 44.
6. " " " " " " " "
7. Amendment of section 37.
8. Insertion of new part IVA.
- 9 Insertion of new sections 44A and 44B.
10. Amendment of section 45.
11. Amendment of section 48
- 12 Insertion of new sections 51A to 51J.
13. Amendment of Schedule B.

PAST CLAIMS AND CHARGES IN RESPECT OF THE DRAINAGE SCHEMES OF HOWRAH
AND RAJAPUR.

- 14 Recovery, under the certificate procedure, of certain subsisting claims in respect of the Howrah and Rajapur drainage schemes.
- 15 Reduction of past charges in respect of the Howrah and Rajapur drainage schemes.
- 16 Refunding or crediting of reduction to landholder.
- 17 Proportionate reduction in amounts recoverable by landholder from tenants.
- 18 Proportionate reduction in amounts recoverable by superior tenants from under-tenants.
- 19 Power to make rules as to reductions.

BENGAL ACT 2 OF 1902.

[THE BENGAL DRAINAGE (AMENDMENT) ACT, 1902.][¹]

(1st October, 1902.)

An Act to amend the Bengal Drainage Act, 1880.[²]

Ben. Act 6
of 1880

Whereas it is expedient to amend the Bengal Drainage Act, 1880[²] in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Drainage (Amendment) Act, Short title. 1902.

PART I.

AMENDMENT OF THE BENGAL DRAINAGE ACT, 1880.[²]

2. In section 3 of the Bengal Drainage Act, 1880,[²] after the definition of "Collector" the following shall be inserted, namely:—
[Printed in Vol. II of this Code.]

Amendment
of section 3,
Bengal Act 6
of 1880.

3. For section 26 of the said Bengal Drainage Act, 1880,[²] the following shall be substituted, namely:—
26, 26A. [Printed in Vol. II of this Code.]

Amendment
of section 26
and inser-
tion of new
section 26A

4. In section 28, sub-section (2), of the said Act,[³] for the words and figures "the interest mentioned in section 26" the word "interest" shall be substituted.

Amendment
of section 28.

5. The following portions of the said Act[³] are hereby repealed, namely:—

Repeal of
section 29
and portions
of sections
30, 31, 38
and 42
to 44.

section 29,

in section 30, the figures and word "26 or,"

in section 31, the words "upon such sums at five per centum per annum," and the words and figures "and any interest pay-

[¹] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1902, Pt. IVA, p. 7; for Report of the Committee, see Calcutta Gazette, 1902, Pt. IV, p. 9; and for the Bill, see Calcutta Gazette, 1902, Pt. IV, p. 10.

[²] The Bengal Drainage Act, 1880, must be taken to extend to the whole of the former Province of Bengal.

[³] The Bengal Drainage Act, 1880, as amended by the Bengal Laws Regulation, 1913 (3 of 1913), s. 3 (2).

[⁴] The Bengal Drainage Act, 1880, as amended by the Bengal Laws Regulation, 1913 (3 of 1913), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 777.

[⁵] Printed in Vol. II of this Code.

[⁶] The Bengal Drainage Act, 1880. It is printed in Vol. II of this Code.

BENGAL ACT 2 OF 1902.

[THE BENGAL DRAINAGE (AMENDMENT) ACT, 1902.][¹]

(1st October, 1902.)

An Act to amend the Bengal Drainage Act, 1880.[²]

Ben. Act 6
of 1880

Whereas it is expedient to amend the Bengal Drainage Act, 1880[²] in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Drainage (Amendment) Act, Short title. 1902.

PART I.

AMENDMENT OF THE BENGAL DRAINAGE ACT, 1880.[²]

2. In section 3 of the Bengal Drainage Act, 1880,[²] after the definition of "Collector" the following shall be inserted, namely:—
[Printed in Vol. II of this Code.]

Amendment
of section 3,
Bengal Act 6
of 1880.

3. For section 26 of the said Bengal Drainage Act, 1880,[²] the following shall be substituted, namely:—
26, 26A. [Printed in Vol. II of this Code.]

Amendment
of section 26
and inser-
tion of new
section 26A

4. In section 28, sub-section (2), of the said Act,[³] for the words and figures "the interest mentioned in section 26" the word "interest" shall be substituted.

Amendment
of section 28.

5. The following portions of the said Act[³] are hereby repealed, namely:—

Repeal of
section 29
and portions
of sections
30, 31, 38
and 42
to 44.

section 29,

in section 30, the figures and word "26 or,"

in section 31, the words "upon such sums at five *per centum per annum*," and the words and figures "and any interest pay-

[¹] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1902, Pt. IVA, p. 7; for Report of Select Committee, see *ibid*, Pt. IV, p. 9; and for Proceedings in Council, see *ibid*, Pt. IVA, pp. 13, 49, 86, and 90

LOCAL EXTENT.—Since this Act has no "local extent" clause it must be taken to extend, like the Act which it amends, to the whole of the former Province of Bengal.

The application of the Act is barred in—

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2) printed in Vol. I, p. 864; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 777.

[²] Printed in Vol. II of this Code.

[³] The Bengal Drainage Act, 1880. It is printed in Vol. II of this Code.

able under section 29, and any interest payable under clause (1) of section 26, but not paid or recovered before the apportionment under section 28, "

in section 38, the words "thereupon at five *per centum per annum*."

in clause (b) of section 42, and in clause (b) of section 43, the words "at the rate of five *per centum per annum*," and

in sub-section (3) of section 44, the words "at five *per centum per annum*."

6. After section 36 of the said Act^[1] the following shall be inserted, namely:—

Insertion of new section 36A.

36A. [Printed in Vol. II of this Code.]

7. (1) In section 37 of the said Act,^[1]—

Amendment of section

for the words "its service" the words "the service thereof" shall be substituted, and

for the words "at the rate of five *per centum per annum*" the words "up to the day of payment," shall be substituted.

(2) The words "at the said rate," in the said section 37, are hereby repealed.

8. After section 41 of the said Act the following shall be inserted, namely:—

Insertion of new Part IV A.

PART IVA. [Printed in Vol. II of this Code.]

9. After section 44 of the said Bengal Drainage Act, 1880,^[2] the following shall be inserted, namely:—

Insertion of new sections 44A and 44B.

44A, 44B. [Printed in Vol. II of this Code.]

10. In section 45 of the said Act,^[1] after the figures "43" the words and figures "or under section 44A" shall be inserted.

Amendment of section 45

11. (1) At the end of sub-section (1) of section 48 of the said Act^[1] the following shall be added, namely:—

Amendment of section 48

[Printed in Vol. II of this Code.]

(2) In sub-section (3) of section 48 of the said Act,^[1] for the word "five" the word "four" shall be substituted.

12. After section 51 of the said Act^[1] the following shall be inserted, namely:—

Insertion of new sections 51A to 51J

51A to 51J. [Printed in Vol. II of this Code.]

[¹] The Bengal Drainage Act, 1880. It is printed in Vol. II of this Code.
[²] It is printed in Vol. II of this Code.

(Secs. 13-15.)

Ben. Act 6
of 1880

13. (1) In Schedule B to the said Bengal Drainage Act, 1880,[¹] for Amendment of Schedule B.
the word "five" the word "four" shall be substituted.

(2) To the said Schedule the following shall be added, namely:—

[Printed in Vol. II of this Code.]

PART II.

PAST CLAIMS AND CHARGES IN RESPECT OF THE DRAINAGE SCHEMES OF HOWRAH AND RAJAPUR.

Ben. Act 6
of 1880.

14. *The provisions of sections 41A, 44A, 51A, 51B [except clauses (a) and (c)] and 51C of the Bengal Drainage Act, 1880,[¹] as amended by this Act, as to the recovery of moneys upon application to the Collector, shall apply also to all claims which have already accrued in respect of the drainage schemes of Howrah and Rajapur and which, at the commencement of this Act, are unsatisfied and have not been barred by limitation: Recovery, under the certificate procedure, of certain subsisting claims in respect of the Howrah and Rajapur drainage schemes*
Provided that every application under any of the said sections in respect of any such claim be made within three months from the commencement of this Act.

Ben. Act 6
of 1880

15. (1) *The Collector shall, as soon as conveniently may be, revise all orders heretofore passed under section 36 of the said Bengal Drainage Act, 1880,[¹] which declared the sums payable in respect of lands benefited by the drainage schemes of Howrah and Rajapur, so as— Reduction of past charges in respect of the Howrah and Rajapur drainage schemes*

(a) *to reduce all charges for interest to the sums which would have been chargeable if the amendments made by this Act had been in force when such orders were passed, and*

(b) *to make such reductions (if any) in other charges as may be directed by the Local Government.*

(2) *When the reductions directed by or under sub-section (1) have been made in respect of any scheme, the Collector shall make an order stating—*

(i) *that all holders of land benefited by the scheme, and all tenants of such land, are entitled to proportionate relief,*

(ii) *how such relief is to be apportioned in respect of each class of such land,*

(iii) *such particulars as to the determination of the persons who are entitled to such relief, and as to the determination of the sums to which such persons are respectively entitled, as may be prescribed by rules made under section 19, and*

(iv) *any other particulars prescribed by such rules.*

BENGAL ACT 1 OF 1903.

[THE BENGAL TENANCY (VALIDATION AND AMENDMENT) ACT, 1903.][¹]

(25th February, 1903.)

An Act to validate certain transfers, made under the Bengal Tenancy Act, 1885,^[2] of permanent tenures and holdings at fixed rents or fixed rates and of shares in the same; and to amend section 106 of that Act.

Whereas doubts and difficulties have arisen respecting the meaning and effect of sections 12, 13, 17 and 18 of the Bengal Tenancy Act, 1885,^[2] as regards the payment of the prescribed landlord's fee and the effect of the non-payment of such fee;

And whereas it is expedient to declare that registered transfers and sales and decrees or orders for foreclosure of mortgage, confirmed and made absolute by the Civil Courts, of permanent tenures and holdings at fixed rates and fixed rents, and of shares in such tenures and holdings, shall not be deemed to be invalid merely on the ground that the landlord's prescribed fee has not been paid;

And whereas it is also expedient to amend section 106 of the said Act in manner hereinafter appearing;

And whereas the said Act having been passed by the Governor General of India in Council, the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892^[2] to the passing of this Act;

It is hereby enacted as follows:—

1. No transfer which has heretofore been made or which may hereafter be made under section 12, section 13, section 17 or section 18 of the Bengal Tenancy Act, 1885^[2] of a permanent tenure, or of a holding at a rent or rate of rent fixed in perpetuity or of a share in such

Validation of transfers of tenures and holdings and shares in the same.

[¹] LEGISLATIVE PAPERS. 1902, Pt. IV, p. 21; for Proceedings in Council, see *ibid*.
LOCAL EXTENT.—Since local extent must be taken this Code.

cutta Gazette, 36; for Proceedings in Council, see *ibid*. p. 1. (8 of 1885), its d in Vol. I of

The application of the Act is barred in—
the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2) printed in Vol. I, p. 864; and
the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 777.

[²] Printed in Vol. I of this Code.

[³] Printed in the Collection of Statutes relating to India, 1913, Vol. II, p. 803.

164 *The Bengal Tenancy (Validation and [Ben. Act 1 of 1903.] Amendments) Act, 1903.*

(Secs. 2-5.)

tenure or holding, shall be deemed to be invalid merely on the ground that the landlord's fee prescribed by the said section 12 or 13 has not been paid:

Provided always that, subject to the *Explanation* following, nothing in this section shall be held to affect the decision of a Court of competent jurisdiction which has become final before the commencement^[1] of this Act.

Explanation.—A decree in a suit for rent which has become final disallowing a claim for rent on the ground that the relationship of landlord and tenant does not exist between the parties to the suit by reason of the non-payment of the landlord's fee shall not bar a suit for rent which became payable subsequently to such claim.

Realiza-
tion of fee
when left
unpaid.

2. In any case where the prescribed fee has been or may hereafter be left unpaid, the landlord may, within two years of the commencement^[1] of this Act,

or within two years of the date of registration of the document effecting the transfer,

or within two years of the date of confirmation of the sale by the Civil Court,

or within two years of the date upon which a decree or order absolute for the foreclosure of a mortgage has been or may hereafter be made by the Civil Court,

apply to the Collector for realization of such fee from the transferee, or from the auction-purchaser or from the person who has obtained an order absolute foreclosure of mortgage in the Civil Court, and on such application being presented the Collector shall realize such fee if still unpaid, together with costs of realization, from such person as if it were an arrear of revenue.

Saving of
section 88.

3. Nothing in section 1 shall be deemed to affect the provisions of section 88 of the said Bengal Tenancy Act, 1885.^[2]

8 of 1885.

Substitution
of a new sec-
tion for sec-
tion 106.

4. For section 106 of the said Act,^[3] the following shall be substituted, namely:—

106. [Printed in Vol. I of this Code.]

Short title.

5. This Act may be called the Bengal Tenancy (Validation and Amendment) Act, 1903.

^[1] i.e., the 25th February, 1903.

^[2] Printed in Vol. I of this Code.

^[3] The Bengal Tenancy Act, 1885. It is printed in Vol. I of this Code.

BENGAL ACT 1 OF 1904.

[THE BENGAL TRAMWAYS (AMENDMENT) ACT, 1904.][¹]

(2nd March, 1904.)

An Act to amend the Bengal Tramways Act, 1883.[²]

Ben Act 3
of 1883.

Whereas it is expedient to amend the Bengal Tramways Act, 1883;[²]

It is hereby enacted as follows:—

1. This Act may be called the Bengal Tramways (Amendment) Act, Short title. 1904.

2. After the word “shorter,” in the proviso to section 41 of the Amendment Bengal Tramways Act, 1883,[²] the words “or longer” shall be inserted. of Ben. Act 3 of 1883, s. 41.

[¹] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see* Calcutta Gazette, 1903, Pt. IV, p. 63; and for Proceedings in Council, *see* *ibid*, Pt. IVA, pp. 221, 236; and *ibid*, 1904, Pt. IVA, pp. 2 and 16.

LOCAL EXTENT.—Since this Act merely amends the Bengal Tramways Act, 1883 (Ben. Act 3 of 1883), it has the same local extent as that Act, printed in Vol. II of this Code

The application of the Act is barred in—

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2) printed in Vol. I, p. 864; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 177.

[²] Printed in Vol. II of this Code

BENGAL ACT 2 OF 1904.

(THE BENGAL PUBLIC PARKS ACT, 1904).^[1]

(9th March, 1904.)

An Act for the regulation of Public Parks in Bengal.

Whereas it is expedient to protect public parks and gardens in Bengal^[2] from injury, and to secure the public from molestation and annoyance while resorting to such parks and gardens;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Public Parks Act, 1904. Short title
and applica-
tion.

(2) It applies to the public parks and gardens mentioned in the Schedule, and may be applied to any other public park or garden in Bengal^[2] by order of the Local Government published in the Calcutta Gazette.

2. In this Act, unless there is anything repugnant in the subject Definitions or context,—

(a) “park” means any public park or garden to which this Act applies by virtue of section 1, sub-section (2), or any order published thereunder;

(b) “superintendent” means the person in executive charge of a park; and for the purposes of section 6, sub-section (2), includes also—

(i) an assistant superintendent of a park, and

(ii) any member of the Managing Committee (if any) of a park; and

(c) “park-durwan” means any person appointed by the superintendent, or by the authority to whom the superintendent is subordinate, to act as a *durwan* of the park.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1903, Pt. IV, p. 62; for Report of Select Committee, see *ibid.* 1904, Pt. IV, p. 22; and for Proceedings in Council, see *ibid.* 1903, Pt. IVA, pp. 218, 224 and *ibid.* 1904, Pt. IVA, pp. 2 and 14.

LOCAL EXTENT.—This Act applies to the public parks and gardens mentioned in the Schedule, and may be applied to any other public park or garden in Bengal^[2] by order—see s. 1 (2).

Laws Regulation, 1913 (3 of 1913), s. 3 (2)

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 177.

^[2] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

170 *The Bengal Public Parks Act, 1904.* [Ben. Act 2 of 1904.]

(Secs. 8-9 and Schedule.)

General
powers,
duties, etc.,
of park-
durwan.

8. Every park-*durwan* shall, in addition to any powers and immunities specially conferred on him by this Act or by rules made hereunder, have, within the limits of the park to which he is appointed, all such powers, privileges and immunities, and shall, within the said limits, be liable to all such duties and responsibilities, as a police-constable has and is liable to within the limits of the police-station in which such park is comprised:

Provided that every park-*durwan* shall be subordinate to the superintendent.

General
powers, etc.,
of police-con-
stables.

9. Every police-constable employed within the limits of a police-station shall have, within any park comprised in such limits, the powers, privileges and immunities conferred on a park-*durwan* by this Act and any rules made hereunder.

THE SCHEDULE.

PUBLIC PARKS AND GARDENS TO WHICH THIS ACT APPLIES IN THE
FIRST INSTANCE.

(See section 1, sub-section (2).)

The Royal Botanic Garden, Sibpur.

The Zoological Garden, Alipur.

The Eden Gardens, Calcutta.

The Lloyd Botanical Garden, Darjeeling.

The Victoria Pleasance, Darjeeling.

BENGAL ACT 3 OF 1904.

(THE BENGAL SETTLED ESTATES ACT, 1904.)

CONTENTS.

PART I.

PRELIMINARY.

SECTION.

1. Short title and extent.
2. Definitions.

PART II.

APPLICATION FOR PERMISSION TO MAKE A FIRST SETTLEMENT OF AN ESTATE.

3. Who may apply for permission to settle an estate.
4. Signature, verification and contents of application.
5. Declarations and draft to accompany application in the case of an estate belonging to a joint Hindu family or to co-sharers.
6. Power to reject application.
7. Transmission and notification of application.
8. Rejection or approval of application after notification.
9. Rejection no bar to making fresh application.

PART III.

PROVISIONS TO BE CONTAINED IN FIRST SETTLEMENTS.

10. Settlement of estates for three generations.
11. Further remainders.
12. Further provisions in settlements.

PART IV.

SUPPLEMENTARY SETTLEMENTS AND FRESH SETTLEMENTS

13. Supplementary settlement in respect of property.
14. Power to apply for permission to make a supplementary settlement in respect of persons.
15. Power to apply for permission to make a fresh settlement.
16. Procedure in dealing with applications under section 14 or 15.
17. Provisions as to fresh settlements.

PART V.

SETTLEMENTS GENERALLY.

18. Approval, stamping and registration of settlements
19. Approval, stamping and registration of instruments of surrender.

172 *The Bengal Settled Estates Act, 1904.* [Ben. Act 3 of 1904.]

Sections.

- 20. Bar to application of succession laws in respect of property comprised in settlement.
- 21. Power of Local Government to grant certificate after death of tenant for life.
- 22. Notification of instruments of settlement and instruments of surrender or revocation of settlement.
- 23. Abrogation of inconsistent laws.

PART VI.

REVOCATION, CANCELLATION AND AMENDMENT OF SETTLEMENTS.

- 24. Revocation of settlement by tenant for life.
- 25. Cancellation or amendment of settlement by Local Government.
- 26. Revival of incumbrances on revocation, cancellation or amendment of settlement.

PART VII.

RIGHTS AND POWERS OF TENANT FOR LIFE AND PROTECTION OF SETTLED ESTATE DURING HIS LIFE.

- 27. Right of tenant for life to profits of settled estate.
- 28. Restriction on alienation by tenant for life.
- 29. Sales by tenant for life.
- 30. Leases by tenant for life.
- 31. Saving of leases of raiyati holdings.
- 32. Bar to sale of settled estate in execution of decree.
- 33. Sale of settled estate for arrears of land-revenue, etc.
- 34. Procedure for recovery of such arrears.

PART VIII.

MISCELLANEOUS.

- 35. Form, publication and duration of permissions granted by Local Government.
- 36. Notifications how to be published.
- 37. Power to make rules.
- 38. Application of Court of Wards Act, 1879.
- 39. Saving of rights of secured creditors.

BENGAL ACT 3 OF 1904.

(THE BENGAL SETTLED ESTATES ACT, 1904.)^[1]

(9th March, 1904.)

An Act to facilitate family settlement of estates in Bengal.^[2]

Whereas it is expedient to facilitate the making of family settlements of estates by landholders in Bengal:^[2]

And whereas, the Bengal Land-revenue Sales Act, 1859,^[3] the Indian Succession Act, 1865^[4], the Court-fees Act, 1870,^[5] the Indian Limitation Act, 1877,^[6] the Probate and Administration Act, 1881,^[7] the Transfer of Property Act, 1882,^[8] the Succession Certificate Act, 1889,^[9] and the Indian Stamp Act, 1899,^[10] having been passed by the Governor General of India in Council, the previous sanction of the Governor General has been obtained, under section 5^[11] of the Indian Councils Act, 1892, to the passing of this Act;

It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be called The Bengal Settled Estates Act, 1904; Short title and extent.

(2) It extends to the whole of Bengal.^[2]

[¹] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1903, Pt. IV, p. 57; for Report of Select Committee, see *ibid*, 1904, Pt. IV, p. 1; and for Proceedings in Council, see *ibid*, 1903, Pt. IVA, pp. 192, 207, and *ibid*, 1904, Pt. IVA, pp. 2 and 16.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal—see s. 1 (2). It is in force in the Sonthal Parganas—see Vol. IV, Pt. III; but its application is barred in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I, p. 864.

[²] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

[³] Printed in Vol. I of this Code.

1909, p. 473.

1909, p. 102.

e-enacted by the Indian Limitation Act, d. 1909, p. 476

1909, p. 80.

1908

[⁴] Printed in the General Acts, 1887-97, Ed. 1909, p. 137.

[⁵] Printed in the General Acts, 1898-03, Ed. 1909, p. 373.

[¹¹] Printed in the Collection of Statutes relating to India, 1913, Vol. II, p. 803.

(Sec. 3.)

which is enforceable against the person or general property of the debtor;

- (l) "secured creditor" means a person who is entitled to enforce payment of a secured debt;
- (m) "unsecured creditor" means a person who is entitled to enforce payment of an unsecured debt;
- (n) "incumbrance" means a secured debt, or an unsecured debt, or both;
- (o) the expression "the Collector," when used with reference to any estate, means the Collector of the district in which the estate or any part thereof is situated; and
- (p) the expression "the Civil Court," when used with reference to any estate, means the principal Civil Court having original jurisdiction in the area in which the estate or any part thereof is situated.

(2) A person shall be deemed, for the purposes of this Act, to be "competent to contract" if he is of the age of majority according to the law to which he is subject, and is of sound mind, and is not disqualified from contracting by any law to which he is subject.

(3) All words and expressions used in this Act, which are defined in the Transfer of Property Act, 1882,^[1] shall have the same meaning as in that Act.

PART II.

APPLICATION FOR PERMISSION TO MAKE A FIRST SETTLEMENT OF AN ESTATE.

3. (1) Any landholder may apply to the Local Government for permission to make a settlement of an estate under this Act,—

- (a) if he is competent to contract,
- (b) if he is in possession of the estate, either in his own right or along with or on behalf of others, and
- (c) if the estate is held in permanent, heritable and transferable right;

(2) Provided that no application may be made under sub-section (1) in respect of any estate—

- (i) unless the applicant is solely entitled to the estate, or

Who may apply for permission to settle an estate.

(Sec. 8.)

- applicant or the estate to which the application relates, and all other persons interested or claiming to be interested in the estate, to send to the Local Government a written notice of their incumbrances and interests, respectively, within a period of six months from the date of the notification; and
- (c) intimating that any objections to the proposed settlement, whether urged by creditors or by other persons interested in the estate, which may be communicated to the Local Government in writing within the said period, will be duly considered.

Rejection or
approval of
application
after notifica-
tion.

8. (1) At any time after the expiration of the said period, and after considering any notices and objections received under section 7 and after such inquiry (if any) as it may think fit to make, the Local Government may, in its discretion, by written order either—

- (a) reject such application, or
- (b) grant^[1] permission to make the proposed settlement, in respect either of the whole of the property to which the application relates or of any part thereof:

Provided that, if any incumbrances have been set forth in the application or brought to the notice of the Local Government, such permission shall not be granted unless—

- (i) the incumbrances are first discharged, or
- (ii) a condition is made for the insertion in the settlement of provisions, to be assented to by the creditors and approved by the Local Government, for the discharge of the incumbrances, or for their continuance, with or without modification, and for the payment of interest thereon.

(2) If the right of the applicant to make the settlement is disputed by or on behalf of any person interested or claiming to be interested in the estate, the Local Government may, if it thinks fit, refer the matter in dispute to the Civil Court for decision, before determining whether to reject the application or to grant permission to make the proposed settlement; and the Civil Court shall, in dealing with any such reference follow the procedure prescribed in the Code of Civil Procedure^[2] for the trial of suits, so far as the same may be applicable.

14 of 1882.

[¹] For a reference to an order made under section 8 (b), see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VI.

[²] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code—see s. 158 thereof, in the General Acts, 1904-09, Ed. 1909, p. 184.

(Secs. 9-10.)

14 of 1882.

(3) Every decision by the Civil Court under sub-section (2) shall be deemed to be a decree within the meaning of the Code of Civil Procedure; [1] and an appeal therefrom shall lie to the High Court.

9. The rejection under section 6 or section 8 of an application for permission to make a settlement of an estate under the foregoing provisions of this Act shall be no bar to the making of a fresh application in respect of the same estate, if the applicant shows sufficient reason for so doing.

Rejection no bar to making fresh application.

PART III.

PROVISIONS TO BE CONTAINED IN FIRST SETTLEMENTS.

10. (1) Every settlement made under the foregoing provisions of this Act, in respect of any estate shall provide that the estate shall be held for life—

Settlement of estates for three generations.

- (a) by the settlor, as first tenant for life;
 - (b) and thereafter, by the second tenant for life, who shall be the eldest or only son of the first tenant for life;
 - (c) and thereafter, by the third tenant for life, who shall be the eldest or only son of the second tenant for life.
- (2) Every such settlement shall further provide,—
- (i) if the estate is one to which the settlor was, immediately before the execution of the settlement, solely entitled—that, after the life of the third tenant for life, the eldest or only son of such tenant shall hold the estate absolutely;
 - (ii) if the estate belonged, immediately before the execution of the settlement, to a joint Hindu family—that, after the life of the third tenant for life, the eldest or only son of such tenant shall during his life be the *karta* or manager of the estate, but without prejudice to the rights of any persons who, but for the settlement, would be co-owners of the estate; and
 - (iii) if the estate belonged, immediately before the execution of the settlement, to co-sharers—that, after the life of the third tenant for life, the eldest or only son of such tenant shall have during his life the sole right of management over the estate;

but subject in each case to the terms of any fresh settlement made by a tenant for life in pursuance of permission granted under section 16.

[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code—see s. 158 thereof, in the General Acts, 1904-09, Ed. 1909, p. 184.

(Secs. 11-12.)

(3) If the eldest or only son of the settlor has predeceased the settlor, or if the settlor desires to exclude such son from holding the estate on the ground of incapacity or defect of character which is proved by the settlor to the satisfaction of the Local Government, then, notwithstanding anything contained in the foregoing sub-sections, the Local Government may permit him to provide in the settlement—

- (i) that the second tenant for life shall be another son of the settlor, if he has another son, or the eldest or only son of the son who has predeceased the settlor or has been excluded as aforesaid, and
- (ii) that the third tenant for life shall be the eldest or only son of the second tenant for life, or the eldest or only son of the son who has predeceased the settlor or has been excluded as aforesaid.

(4) Any settlement made under the foregoing provisions of this Act may provide that any tenant for life may, with the previous sanction of the Local Government, by written instrument surrender his interest under the settlement in favour of the next tenant for life.

Further re-
mindors.

11. Every settlement made under the foregoing provisions of this Act may also contain provisions for vesting the estate, in the event of the settlement on the second tenant for life or the third tenant for life or his son failing to take effect, in some other person descended from the settlor or the settlor's father in the direct male line.

Further pro-
visions in
settlements.

12. (1) Every settlement made under the foregoing provisions of this Act shall specify all incumbrances referred to in clause (ii) of section 8.

(2) Every such settlement shall also contain such provisions as may be approved by the Local Government with regard to the following matters, namely:—

- (a) the discharge of incumbrances on the estate, and the payment of interest thereon; or their continuance (with or without modification), and the payment of interest thereon;
- (b) the maintenance of the co-owners and co-sharers (if any) by or on whose behalf a declaration has been made under clause (ii) of section 5, and of all persons who at the time of the execution of the settlement are, or thereafter may be, legally entitled to maintenance out of the estate;
- (c) the management of the estate after the death of the settlor—
 - (i) during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or
 - (ii) during the minority of the second tenant for life;

(Sec. 13.)

- (d) the management of the estate after the death of the second tenant for life—
 - (i) during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or
 - (ii) during the minority of the third tenant for life;
- (e) the management of the estate after the death of the third tenant, for life—
 - (i) during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or
 - (ii) during the minority of the next holder.

(3) If any settlement made under the foregoing provisions of this Act includes money, securities for money, or movable property, the settlement shall contain such provisions as may be approved by the Local Government for vesting such money, securities or property in a trustee, for the investment or conversion of such money or securities in or into securities authorized by section 20^[1] of the Indian Trusts Act, 1882, and the payment to the trustee of expenses and remuneration in accordance with rules made under section 37, clause (c).

Explanation—The Official Trustee of Bengal,^[2] the Collector or any private person may be appointed to be a trustee for the purposes of this sub-section.

(4) In addition to the various matters hereinbefore specified the Local Government may require or permit the insertion in any settlement made under the foregoing provisions of this Act, of any provisions which it may think fit, and may make its approval of the settlement conditional on the insertion of provisions which it has required to be inserted:

Provided that no provisions inserted in pursuance of this sub-section shall operate to the prejudice of any secured or unsecured creditor unless assented to by him.

PART IV.

SUPPLEMENTARY SETTLEMENTS AND FRESH SETTLEMENTS.

13. (1) At any time after a settlement has been made under the foregoing provisions of this Act, a tenant for life may apply to the Local Government for a supplementary settlement in respect of property.

[1] Printed in the General Acts, 1879-86, Ed. 1909, p. 180.

[2] As to the Official Trustee, see the Official Trustees Act, 1913 (2 of 1913), in the General Acts, Vol. VII (1909-1913), p. 299.

(Sec. 16.)

solely entitled, the Local Government may, in its discretion, and after such inquiry (if any) as it may think fit to make, by written order, either—

- (i) reject the application, or
- (ii) grant permission to make the proposed settlement.

(3) If any such application relates to an estate which belonged, immediately before the execution of the former settlements, respectively, to a joint Hindu family or to co-sharers the application must be accompanied by a declaration by all persons (other than the applicant) who, but for such settlements, would be co-owners or co-sharers in the estate, to the effect that they are willing to assent to the proposed settlement.

(4) If any of such co-owners or co-sharers is, at the time when the application is made, a minor or a lunatic, a declaration under sub-section (3) of this section may be accepted if it is made and approved as indicated in sub-section (2) or sub-section (3), as the case may be, of section 5.

(5) In every case referred to in sub-section (3) of this section, the Local Government

shall send a copy of the application, and of the declarations which accompanied it, to each person who has made a declaration in pursuance of that sub-section;

and, with the previous sanction of the Governor General in Council, shall publish a notification—

- (a) setting forth the application and the declarations which accompanied it;
- (b) calling upon all persons (other than creditors) interested or claiming to be interested in the estate, to send to the Local Government written notice of their interests within a period of six months from the date of the notification, and
- (c) intimating that any objections by such persons to the purposed settlement, which may be communicated to the Local Government, in writing within the said period, will be duly considered;

and, at any time after the expiration of the said period and after considering any notices and objections received under this sub-section, and after such inquiry (if any) as it may think fit to make, may, in its discretion, by written order, either—

- (i) reject the said application, or
- (ii) grant permission to make the proposed settlement.

(Secs. 17-18.)

Provisions as
to fresh
settlements.

17. (1) The provisions of sections 10, 11 and 12 shall apply to every fresh settlement made in pursuance of permission granted under section 16.

(2) All property which, immediately before the execution of a fresh settlement in respect of any estate, is included in any former settlement of the estate made under this Act, must be included in such fresh settlement.

(3) No property shall be included in any fresh settlement made under this Act in respect of any estate unless it is, immediately before the execution of such settlement, included in a former settlement of the estate made under this Act.

(4) If any incumbrance, which is dealt with in any former settlement made under this Act in respect of any estate, is still in existence at the time of the execution of the fresh settlement of the estate, then nothing contained in such fresh settlement shall affect the rights of the creditor unless assented to by him.

(5) Every fresh settlement made under this Act in respect of any estate shall, subject to the foregoing provisions of this section, supersede all former settlements made under this Act in respect of such estate.

PART V.

SETTLEMENTS GENERALLY.

Approval,
stamping
and regis-
tration of
settlements.

18. (1) No settlement made under this Act shall take effect unless the instrument of settlement—

- (a) is of a non-testamentary character,
- (b) is attested by two or more witnesses,
- (c) has been approved by the Local Government before execution; and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the Local Government,
- (d) bears a stamp of the full value prescribed by sub-section (2), or, if the sanction of the Board of Revenue^[1] has been given under sub-section (3), of one-third of such value, and
- (e) is registered within three months after the said approval has been certified as aforesaid.

[¹] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), *post*, p. 385.

(Secs. 19-20.)

(2) Every instrument of settlement made under this Act, not being a supplementary settlement referred to in section 14 or a fresh settlement referred to in section 15, shall, notwithstanding anything contained in the Indian Stamp Act, 1899^[1] bear a stamp of a value equivalent to one-fourth of the annual net profits of the estate comprised in the settlement.

(3) Provided that a stamp of one-third of such value may be affixed, with the previous sanction of the Board of Revenue^[2] on arrangements being made to its satisfaction for the affixing of stamps for the rest of such value at subsequent dates within three years from the date of the instrument.

(4) If any question arises, with reference to sub-section (2) or sub-section (3), as to the amount of the annual net profits of any estate, the decision of the Board of Revenue^[2] thereon shall be final.

(5) Every instrument making a supplementary settlement referred to in section 14 or a fresh settlement referred to in section 15 shall, notwithstanding anything contained in the Indian Stamp Act, 1899,^[2] bear a stamp of ten rupees.

(6) Subject to the foregoing provisions of this section, every instrument of settlement shall take effect from the date of its execution.

19. (1) No instrument of surrender referred to in sub-section (4) of section 10 shall take effect unless it—

- (a) is of a non-testamentary character;
- (b) is attested by two or more witnesses;
- (c) has been approved by the Local Government before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the Local Government;
- (d) is stamped in accordance with the provisions of the Indian Stamp Act, 1899,^[1] and
- (e) is registered within three months after the said approval has been certified as aforesaid.

Approval,
stamping
and registra-
tion of ins-
truments of
surrender.

(2) Subject to the foregoing provisions of this section, every such instrument shall take effect from the date of its execution.

20. (1) Notwithstanding anything contained in the Indian Succession Act, 1865,^[3] the Probate and Administration Act, 1881,^[4] or the

But to appli-
cation of
succession
laws, in
respect of

[1] Printed in the General Acts, 1899-1900, p. 373.
of the Board of Revenue, see the Bihar
Act 1 of 1913), *post*, p. 385.
903, p. 473.

[4] Printed in the General Acts, 1879-86, Ed. 1903, p. 80.

(Secs. 21-23.)

property
comprised in
settlement.

Succession Certificate Act, 1889,^[1] it shall not be necessary for any person to obtain probate or letters of administration, or a certificate under the last-mentioned Act, to admit of his taking any property or recovering any debt or realizing any security in virtue of a settlement made under this Act. 5 of 1881.
7 of 1889.]

(2) If any probate, any letters of administration or any certificate granted under the Succession Certificate Act, 1889,^[1] purports to cover any property, debt or security which is comprised in a settlement made under this Act, then, notwithstanding anything contained in Article 11 or Article 12 of Schedule I to the Court-fees Act, 1870,^[2] no court-fee shall be levied under either of those Articles in respect of such property, debt or security. 7 of 1889.
7 of 1870.]

Power of
Local Govern-
ment to grant
certificate
after death
of tenant for
life.

21. At any time after the death of any tenant for life of a settled estate, any of the Secretaries to the Local Government may, upon the application of any person claiming a right to hold the settled estate under the instrument of settlement, grant a certificate to such person declaring him to be entitled to hold such estate under such instrument; and such certificate shall be presumed to be correct unless and until the contrary is proved.

Notification
of instru-
ments of
settlement
and instru-
ments of
surrender or
revocation
of settlement.

22. (1) When any instrument of settlement or surrender of settlement or revocation of settlement is registered, the registering-officer shall report the fact to the Local Government; and, on receipt of such report, the Local Government shall publish a notification^[3] stating the purport of the instrument and the office in which it has been registered.

(2) The Collector shall cause a copy of every such notification to be posted in his office, and to be published on the settled estate at such places and in such manner as may in his opinion be sufficient for giving information to tenants and other persons interested.

Abrogation
of incon-
sistent laws.

23. No settlement or part of a settlement made under this Act shall be liable to be avoided or set aside by any Civil Court by reason only that it contravenes—

- (a) any provision of the Transfer of Property Act, 1882,^[4] or 4 of 1882.]]
- (b) any law or rule for the time being in force for the prevention of perpetuities, or
- (c) any family custom or any personal law of succession to which the family is subject,

which is inconsistent with the provisions of this Act.

^[1] Printed in the General Acts, 1887-97, Ed. 1909, p. 137.

^[2] Printed in the General Acts, 1868-78, Ed. 1909, p. 102.

^[3] For a reference to a notification issued under section 22 (1), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[4] Printed in the General Acts, 1879-86, Ed. 1909, p. 203.

(Secs. 24-25.)

PART VI.

REVOCATION, CANCELLATION AND AMENDMENT OF SETTLEMENTS.

24. (1) A tenant for life of a settled estate may, at any time, if he is competent to contract, apply to the Local Government for permission to revoke, either wholly or as respects any particular property, any settlement made under this Act. Revocation of settlement by tenant for life.

(2) The Local Government, after considering the application, and the result of any inquiry made by it or under its orders, and any further particulars or information called for by it, may, in its discretion, by written order, either—

- (a) reject the application, or
- (b) grant the permission applied for, or
- (c) grant permission to revoke the settlement as respects such property only as may be specified in the order.

(3) When permission is granted under sub-section (2) to revoke a settlement, either wholly or as respects any particular property, the revocation shall not take effect unless the instrument of revocation—

- (i) is of a non-testamentary character,
- (ii) is attested by two or more witnesses,
- (iii) has been approved by the Local Government before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the Local Government,
- (iv) is stamped in accordance with the provisions of the Indian Stamp Act, 1899, [1] and
- (v) is registered within three months after the said approval has been certified as aforesaid.

(4) Subject to the foregoing provision of this section, every such instrument shall take effect from the date of its execution.

25. (1) Notwithstanding anything hereinbefore contained, the Local Government may at any time declare by notification that any settlement made under this Act in respect of a settled estate shall be deemed— Cancellation or amendment of settlement by Local Government.

- (a) to be cancelled, or
- (b) to be amended so as to exclude any part of the estate described in the notification.

(Secs. 26-29.)

(2) On the publication of such notification the said settlement shall be deemed to be cancelled or amended as aforesaid, as the case may be.

Revival of
incumbrances on revo-
cation, can-
cellation or
amendment
of settlement.

26. When any instrument of settlement is revoked under section 24, or cancelled or amended under section 25, the rights of all persons having incumbrances on the estate shall, notwithstanding anything contained in the Indian Limitation Act, 1877,^[1] revive and be enforceable as if the 15 of 1877 settlement had not been made, but subject to any payments which were made while the settlement was in force.

PART VII.

RIGHTS AND POWERS OF TENANT FOR LIFE, AND PROTECTION OF SETTLED ESTATE DURING HIS LIFE.

Right of
tenant for
life to profits
of settled
estate.

27. All profits of a settled estate, which are realized by a tenant for life, or which, immediately before his death, were due to him but were not realized by him, shall, subject to the other provisions of this Act, belong absolutely to such tenant or his heirs, executors, administrators or assigns.

Provided that if any rents due to a tenant for life in respect of a settled estate were in arrear immediately before his death, the same shall, upon his death, notwithstanding anything contained in this Act, or in the Indian Succession Act, 1865,^[2] or in any other law, or in any settle- 10 of 1865. ment made under this Act, and notwithstanding any will or other disposition made by such tenant, become due to the next holder of the estate.

Restriction
on aliena-
tion by
tenant for
life.

28. Except as provided in sections 29 and 30, a tenant for life of a settled estate shall not be entitled to transfer by way of sale or gift, or otherwise alienate, or to create any incumbrance upon, or to lease, the estate, or any part thereof, or to assign his right to receive any of the profits thereof.

Sales by
tenant for
life.

29. (1) A tenant for life of a settled estate may, with the previous written sanction of the Civil Court, sell the estate or any part thereof.

(2) If the estate belonged, immediately before the execution of the settlement, to a joint Hindu family or to co-sharers the Court shall, before determining to accord such sanction notify the proposed sale to all persons (except the tenant for life) who, but for the settlement, would be

[¹] Act 15 of 1877 has been repealed and re-enacted by the Indian Limitation Act, 1908 (9 of 1908), printed in the General Acts, 1904-08, Ed. 1909, p. 476 and this reference should now be construed as a reference to the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in the General Acts, 1887-97, Ed. 1909, p. 579.

[²] Printed in the General Acts, 1834-67, Ed. 1909, p. 473.

(Sec. 30.)

co-owners or co-sharers in the estate; and shall hear and duly consider any objection which may be advanced by them or on their behalf.

(3) The proceeds of every such sale shall be paid by the purchaser to the Collector; and shall be held by the Collector in trust to re-invest the same, with the approval of the Local Government, in immovable property, which shall, upon such re-investment, be and remain subject to the settlement in like manner as if it had been originally comprised therein.

30. (1) A tenant for life of a settled estate may lease the estate or any part thereof from year to year or for any term not exceeding seven years, or (with the previous written consent of the Collector) for any longer term not exceeding fourteen years, or (with the previous sanction of the Local Government) for any longer term of years or in perpetuity. Leases by tenant for life.

(2) No premium or fine shall be taken on any such lease granted for a term exceeding seven years, or in perpetuity, except with the previous written consent of the Collector.

(3) When any premium or fine is taken on any lease granted under sub-section (1), then—

(a) if the lease is from year to year or for a term of years, a sum equivalent to four-fifths of the amount of the premium or fine, or

(b) if the lease is in perpetuity, the whole of the premium or fine shall be paid—

(i) to the trustee appointed for the purposes of section 12, sub-section (3), or

(ii) if no trustee has been so appointed, to a trustee to be appointed for the purpose;

and shall be held by such trustees as part of the settled estate, and shall be invested by him in securities authorized by section 20^[1] of the Indian Trusts Act, 1882:

2 of 1882.

Provided that such trustee may retain, for the payment of his expenses and remuneration, such portion of the amount paid to him as may be authorized by rules made under section 37, clause (c).

(4) In respect of every such lease the best rent shall be reserved that can reasonably be obtained.

(5) No payment of any instalment of such rent made to a tenant for life before it falls due shall operate to the prejudice of any subsequent holder of the estate.

[1] Printed in the General Acts, 1879-86, Ed. 1909, p. 180.

(Secs. 31-34.)

Saving of leases of *rai-yati* holdings. Bar to sale of settled estate in execution of decree.

31. Nothing in section 28 or sub-sections (1) and (2) of section 30 shall apply to leases of *rai-yati* holdings.

32. (1) No settled estate or part thereof shall, during the life of a tenant for life, be sold in execution of a decree of a Civil Court.

(2) If any decree against a tenant for life of a settled estate is not satisfied, the Court may, on the application of the decree-holder, appoint a Receiver of such estate or any part thereof, under the provisions of Chapter XXXVI of the Code of Civil Procedure,^[1] for the purpose of recovering the amount of the decree and, subject to the rights of any secured creditor over such estate or part, satisfying the claims of the 14 of 1882. decree-holder.

(3) An appeal shall lie to the High Court from any order made by a Court under sub-section (2).

Sale of settled estate for arrears of land-revenue, etc.

33. (1) Notwithstanding anything contained in the Bengal Land-revenue Sales Act, 1859,^[2] or any other law, no settled estate or part of 11 of 1859. a settled estate shall, without the previous sanction of the Local Government, be sold, during the life of any tenant for life thereof, for an arrear of land-revenue or for any other arrear which is recoverable in the same manner as an arrear of land-revenue.

(2) If any settled estate or part of a settled estate be sold, with the sanction required by sub-section (1) of this section, to any person other than the tenant for life, the resulting surplus shall be dealt with in the manner described in sub-section (3) of section 29;

and, if the estate or any part thereof be purchased at the sale by the tenant for life, the resulting surplus shall be paid to the tenant for life, the estate or part so purchased shall, notwithstanding the sale, continue to be subject to the settlement.

(3) If the person whose name is entered in any certificate granted under the said Bengal Land-revenue Sales Act, 1859,^[2] or any other law, 11 of 1859. as purchaser of a settled estate or part thereof, is not the tenant for life, the said resulting surplus may be retained by such person, and shall not be payable to the tenant for life, even though it may be claimed that the purchase was made by such person on behalf of the tenant for life.

Procedure for recovery of such arrears.

34. (1) If any such arrear accrues in respect of a settled estate, or any part thereof, during the life of any tenant for life thereof, and if the sale of the estate or part for the recovery of arrear is not sanctioned by the Local Government under section 33, the Collector may attach the estate or part,

^[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rules 1 to 3 and 5 in Order XL in Schedule I to that Code—see s. 158—thereof, in the General Acts, 1904-09, Ed. 1909, p. 184.

^[2] Printed in Vol. I of this Code.

(Secs. 36-38.)

permissions
granted by
Local Gov-
ernment.

13, section 16 or section 24 shall be in writing signed by one of Secretaries to the Local Government, and shall contain a description of the property or person, in respect of which the permission is granted, sufficient to identify the same,

(2) Every permission granted by the Local Government under section 8, section 13, section 16 or section 24 shall be published by notification, and shall remain in force until the expiry of twelve months from the date of the notification, or until the death of the applicant, whichever first happens.

Notifications
how to be
published.

36. Every notification prescribed by this Act shall be published in the Calcutta Gazette and also in such Vernacular Gazettes (if any) as the Local Government may direct.

Power to
make rules.

37. (1) The Local Government may, after previous publication,^[1] make rules^[2] for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provision, the Local Government may make rules for all or any of the following matters, namely:—

- (a) the procedure to be followed in submitting an application to the Local Government under this Act;
- (b) the form and contents of such applications and the documents (if any) which should accompany them.
- (c) the payment to trustees, out of the trust property, of expenses properly incurred in or about the execution of any trust created under this Act, and of remuneration for their trouble, skill and loss of time in executing any such trust;
- (d) the guidance of the Collector in managing estates attached under section 34;
- (e) the payment or recovery of any expenses incurred by the Government in connection with any proceedings taken under this Act.

Application
of Court of
Wards Act,
1879.

38. The provisions of the Court of Wards Act, 1879,^[3] so far as they are not inconsistent with the terms of settlements duly made under this Act, shall be applicable to settled estates. Ben. Act 9 of 1879.

^[1] As to previous publication, see the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 24, *ante*, p. 148.

^[2] For a reference to rules made under section 37, see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VI.

^[3] Printed in Vol. II of this Code.

(Sec. 39.)

39. Nothing in this Act shall affect the rights of any secured creditor—

Saving of rights of secured creditors.

- (a) if his incumbrances or any of them have not been set forth in the list prescribed by section 4, clause (c), or
- (b) if he has not assented to any condition inserted in a settlement made under this Act for the discharge or continuance of his incumbrances or any of them.

BENGAL ACT 3 of 1905.

(THE BENGAL SMOKE-NUISANCES ACT, 1905.)

CONTENTS.

SECTION.

1. Short title and extent.
2. Power to extend Act.
3. Definitions.
4. Constitution of Commission.
5. Appointment of Inspectors.
6. Power to prohibit the erection of kilns or furnaces, or the manufacture of coke in specified areas.
7. Power to order demolition of kilns or furnaces, erected within prohibited areas.
8. Penalty when smoke is emitted to a greater extent than is permitted by rules.
9. Powers of Inspectors.
10. Rules.
11. Cognizance of offences.
12. Disposal of fines.
13. Repeal.

BENGAL ACT 3 OF 1905.

(THE BENGAL SMOKE-NUISANCES ACT, 1905.)^[1]

(3rd May, 1905.)

An Act to amend the law relating to the abatement of nuisances arising from the smoke of furnaces or fire-places in the town and suburbs of Calcutta and in Howrah and to provide for the extension thereof to other areas in Bengal.

Whereas it is expedient to amend the law relating to the abatement of nuisances arising from the smoke of furnaces or fire-places in the town and suburbs of Calcutta and in Howrah and to provide for the extension thereof to other areas in Bengal.^[2]

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Smoke-nuisances Act, 1905;^{Short title and extent}

(2) It extends in the first instance to—

(a) the town of Calcutta, as defined in section 3 of the Calcutta Police Act, 1866;^[3]

(b) the suburbs of Calcutta, as for the time being defined by notifications published under section 1 of the Calcutta Suburban Police Act, 1866;^[3] and

(c) the station of Howrah, as described in the Schedule to the Howrah Offences Act, 1857.^[4]

2. (1) The Local Government may, by notification published in the Calcutta Gazette and in such other manner (if any) as the Local Government may determine, declare its intention to extend this Act to any speci-^{Power to extend Act}

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1905, Pt. IV, p. 5; for Report of Select Committee, see *ibid*, Pt. IV, p. 11; and for Proceedings in Council, see *ibid*, 1904, Pt. IVA, p. 154; see *ibid*, 1905, Pt. IVA, pp. 5, 16, 23, 30 and 54.

LOCAL EXTENT.—This Act extends to the town and suburbs of Calcutta and the station of Howrah, and may be extended to other areas—see sections 1 and 2.

The application of the Act is barred in—

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2) printed in Vol. I, p. 864; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 777.

^[2] This includes the present Province of Bihar and Orissa.

^[3] Printed in Vol. II of the Bengal Code, 4th Ed., 1913-15.

^[4] Printed in Vol. I of that Code.

(Sec. 3.)

fied area in Bengal^[1] other than the areas mentioned in section 1, sub-section (2).

Provided that, if a military cantonment is situated within any area to which it is proposed to extend this Act, no notification shall be published under this sub-section in respect of such area without the previous sanction of the Governor General in Council.

(2) Any inhabitant of an area to which it is proposed to extend this Act may, if he objects to such extension, submit his objection in writing to the Local Government within a period of three months from the publication of the said notification in the Calcutta Gazette.

(3) At any time after the expiration of the said period, and after considering the objections (if any) submitted under sub-section (2), the Local Government may, by notification in the Calcutta Gazette, extend this Act to the said area.

3. In this Act,—

Definition.

(1) “furnace” means any furnace or fire-place used—

(a) for working engines by steam, or

(b) for the purpose of carrying on any trade, manufacture or industry, in cases not falling under clause (a):

Provided that a furnace or fire-place used for any of the following purposes shall not be deemed to be a furnace within the meaning of this Act, namely:—

(i) household or domestic purposes,

(ii) the raising of steam on ocean-going steamers, within such period prior to their leaving the port, or to their moving from one part to another thereof, as may be prescribed by rule made under section 10, sub-section (2), clause (f), or

(iii) the burning of the dead;

(2) “Inspector” means a Chief Inspector of Smoke-nuisances, or an Assistant Inspector of Smoke-nuisances, appointed under this Act;

(3) “the Commission” means the Bengal Smoke-nuisances Commission constituted under this Act;

(4) the expression “owner” when used with reference to a furnace includes any agent or hirer using the furnace, and any foreman or other person superintending the working of the furnace; and

(5) “Magistrate” means a Presidency Magistrate, a Magistrate of the first class or a Bench of Magistrates exercising first class powers under the Code of Criminal Procedure.^[2]

^[1] This includes the present Province of Bihar and Orissa.

^[2] Printed in the General Acts, 1898-1903, Ed. 1909, p. 38.

(Secs. 4-6.)

4. (1) The Local Government shall, by notification^[1] in the Calcutta Constitution Gazette, constitute a Commission, to be called the Bengal Smoke-nuisances Commission, to supervise and control the working of this Act. of Commis-
sion.

(2) The said Commission shall consist of a President and so many other members as the Local Government may determine.

(3) One-half of the members (exclusive of President) shall be officials nominated by the Local Government; and the remainder shall be non-officials nominated, in such manner as the Local Government may direct, by bodies or associations whose interests are likely to be affected by this Act.

(4) Subject to the provisions of sub-section (3), all members of the Commission shall be appointed, and all vacancies in the Commission shall, as occasion requires, be filled up, by the Local Government by notification in the Calcutta Gazette,

(5) No act done by the Commission shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Commission.

5. (1) The Local Government may, by notification in the Calcutta Appointment Gazette, appoint a Chief Inspector of Smoke-nuisances and so many of Inspectors. Assistant Inspectors of Smoke-nuisances as it may think fit.

(2) Every Assistant Inspector appointed under sub-section (1) shall be subordinate to the Chief Inspector, and all Inspectors shall be subordinate to, and subject to the control of, the Commission.

6. (1) The Local Government may, by notification^[2] in the Calcutta Gazette, prohibit, within any specified area,— Power to
prohibit the
erection of
kilns or
furnaces, or
the manu-
facture of
coke, in
specified
areas

(a) the erection of brick, tile or lime kilns,^[3]

(b) the erection of furnaces to be used for the calcining or smelting of ores or minerals, or for the casting, puddling or rolling of iron or other metals, or for the conversion of pig-iron into wrought-iron, or

(c) the manufacture of coke, in ovens, or with special appliances, or

(d) the making of coke without ovens or special appliances:

Provided that where, prior to the issue of such notification, a license has been granted by the Chairman of the Calcutta Corporation under the provisions of Chapter XXXIII^[4] of the Calcutta Municipal Act, 1899,

^[1] For a reference to a notification issued under section 4, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(d), see the Bihar and Orissa for a further notification, see

(Secs. 7-9.)

for the erection of a furnace to be used for any of the purposes mentioned in clauses (a) and (b), or for the manufacture of coke as described in clauses (c) and (d), such notification shall not affect such furnace or such manufacture.

(2) If any kiln or furnace be erected in contravention of any notification issued under sub-section (1), clause (a) or clause (b), the owner thereof shall be liable to fine which may extend to two hundred and fifty rupees.

(3) If any person manufactures coke in contravention of any notification issued under sub-section (1), clause (c), he shall be liable to fine which may extend, on a first conviction, to two hundred and fifty rupees; and on any subsequent conviction to five hundred rupees.

(4) If any person makes coke in contravention of any notification issued under sub-section (1), clause (d), he shall be liable to fine which may extend, on a first conviction, to twenty-five rupees, and on any subsequent conviction to fifty rupees.

Power to
order de-
molition of
kilns or
furnaces
erected
within
prohibited
areas.

7. (1) Whenever a Magistrate imposes a fine on any person under section 6, sub-section (2), for erecting a kiln or furnace in contravention of any notification issued under section 6, sub-section (1), clause (a) or clause (b), he may by order direct such person to demolish the kiln or furnace within a period specified on the order.

(2) If any person fails to demolish any kiln or furnace within the period prescribed in any such order, or within such longer period as the Magistrate may, for special reason, allow, he shall be liable to fine which may extend to twenty rupees for every day thereafter during which such failure continues.

Penalty
when
smoke is
emitted to a
greater extent
than is per-
mitted by
rules.

8. (1) If smoke be emitted from any furnace in greater density, or at a lower altitude, or for a longer time, than is permitted by rules made under this Act, the owner of the furnace shall be liable to fine which may extend, on a first conviction, to fifty rupees, on a second conviction to one hundred rupees, and on any subsequent conviction to two hundred rupees.

(2) Sub-section (1) shall not apply to any furnace which is used—

(a) in connection with a brick, tile or lime kiln, or

(b) for any of the purposes mentioned in clause (b), clause (c) or clause (d) of section 6.

Powers to
Inspectors.

9. (1) An Inspector may, after giving reasonable notice in writing to the owner, manager, engineer or person in charge—

(a) enter and inspect, during working-hours, any building or place which contains a furnace, and inspect such furnace;

(Sec. 10.)

- (b) under the written authority of the Commission, use and test any appliance used for preventing the emission of smoke from any such furnace; and
- (c) under the written authority of the Commission, direct that any such furnace be worked or stoked experimentally, during his visit to such building or place, in any manner which he may consider suitable for preventing or reducing the emission of smoke, but not so as to interfere with the business carried on in such building or place further than is necessary for the purposes of the experiment.

(2) If any owner of a furnace in respect of which a direction is given under clause (c) fails to secure compliance with such direction, he shall be liable to fine which may extend to one hundred rupees.

10. (1) The Local Government may, with the previous sanction of the Governor General in Council, and after previous publication,^[1] make rules^[2] to carry out the objects of this Act.

(2) In particular, and without prejudice to the generality of sub-section (1) such rules may—

- (a) regulate the transaction of business by the Commission;
- (b) prescribe the powers and duties to be exercised and performed by the Commission and by Inspectors, respectively, and regulate the exercise and performance of those powers and duties;
- (c) prescribe a scale for the purpose of determining the density of smoke;
- (d) prescribe the density of smoke that may be emitted from a furnace;
- (e) prescribe the time during which smoke of such density may be emitted from a furnace;
- (f) prescribe the period during which, for the purpose of raising steam prior to leaving the port, or to moving from one part to another thereof, the furnaces of ocean-going vessels shall not be held to be furnaces within the meaning of this Act;
- (g) prescribe the altitude below which smoke may not be emitted from a furnace;
- (h) prescribe a procedure for the giving of warning to offenders before instituting a prosecution under this Act, and declare

[¹] As to previous publication, see the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 24, *ante*, p. 143

[²] For rules made under section 10, see Calcutta Gazette, 1913, Pt. I, p. 911.

202 *The Bengal Smoke-nuisance Act, 1905.* [Ben. Act 3 of 1905.]

(Secs. 11-13.)

the minimum period which should be allowed to elapse in different classes of cases between the giving of such warning and the institution of a prosecution; and

(2) authorize the payment of a fee, not exceeding thirty-two rupees, to each or any member of the Commission attending a meeting of the Commission.

(3) The date to be specified in accordance with clause (3) of section 24^[1] of the Bengal General Clauses Act, 1899, as that after which a Ben. Act 1 draft of rules proposed to be made under this section will be taken into of 1899. consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(4) Any rule to be made under this Act shall, before it is published for criticism under sub-section (1), be referred to the Commission constituted under section 4, and the rule shall not be so published until the said Commission has reported as to the expediency of making the proposed rule and as to the suitability of its provisions.

(5) All rules made under this section shall be published in the Calcutta Gazette.

Cognizance
of offences.

11. A Magistrate may take cognizance of an offence against this Act only—

- (a) upon a complaint made by, or with the written authority of, the Chief Inspector, and
- (b) within a period of two months from the date of the commission of the offence.

Disposal of
fines.

12. All fines recovered under this Act shall be disposed of in such manner as the Local Government may direct.

Repeal.

13. The Calcutta and Howrah Smoke-nuisances Act, 1863, is repealed. Ben. Act 2 of 1863.

[¹] Printed ante, p. 143.

BENGAL ACT 1 OF 1906.

[THE BENGAL COURT OF WARDS (AMENDMENT) ACT, 1906.]

CONTENTS.

SECTION.

1. Short title.
2. Partial repeal of section 9 of Bengal Act 9 of 1879.
3. Insertion of new sections 10A to 10E.
4. Insertion of new section 13A.
5. New section 34A.
6. Partial repeal of section 56.
7. Insertion of new section 59A.
8. Insertion of new section 60B.
9. Repeal of section 62.
10. New section 64A.

BENGAL ACT 1 OF 1906.

[THE BENGAL COURT OF WARDS (AMENDMENT) ACT, 1906.] [1]

(28th March, 1906.)

An Act to amend the Court of Wards Act, 1879.

Ben. Act 9
of 1879.

Whereas it is expedient to amend the Court of Wards Act, 1879; [2]

55 & 56
Vict., c. 14.

And whereas the previous sanction of the Governor General has been obtained, under section 5 [4] of the Indian Councils Act, 1892, to the provisions of this Act which affects Acts passed by the Governor General of India in Council;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Court of Wards (Amendment) Short title. Act, 1906.

Ben. Act 9
of 1879.

2. In section 9 of the Court of Wards Act, 1879 [2] [as amended by the Court of Wards Act (Bengal) Amendment Act, 1892], [3] the words, figures and letters from “ And in any case in which the Court has taken charge ” to the end of the section are hereby repealed. Partial repeal of section 9 of Bengal Act 9 of 1879.

4 of 1892.

Ben. Act 9
of 1879.

3. After section 10 of the said Court of Wards Act, 1879, [2] the following shall be inserted, namely:— Insertion of new sections 10A to 10E.
10A to 10E. [Printed in Vol. II of this Code.]

4. After section 13 of the said Act [5] the following shall be inserted, namely:— Insertion of new section 13A.
13A. [Printed in Vol. II of this Code.]

5. After section 34 of the said Act [5] the following shall be inserted, namely:— New section to 34A.
34A. [Printed in Vol. II of this Code.]

Ben. Act 9
of 1879.
4 of 1892.

6. The words from “ or to a proprietor,” to the end of section 56 of the Court of Wards Act, 1879 [2] [as amended by the Court of Wards Act (Bengal) Amendment Act, 1892] [3] are hereby repealed. Partial repeal of section 56.

[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1905, Pt. IV, pp. 31, 32; for Proceedings in Council, see *ibid*, Pt. IV A., pp. 202 to 204, 209 to 213, and *ibid*, 1906, Pt. IV A., pp. 4 and 6 to 18.

LOCAL EXTENT.—Since this Act has no local extent clause, it must be taken originally to have extended to those territories, then comprised in the province of Bengal, in which the Court of Wards Act, 1879 (Ben. Act 9 of 1879) was in force.

It now applies however only to the
The Act is in force in the Santal Parganas District by
printed in Vol. I, p. 864.

[2] Printed in Vol. II of this Code.

[3] Printed in Vol. I of this Code.

[4] Printed in the Collection of Statutes relating to India, 1913, Vol. 11, p. 804.

[5] The Court of Wards Act, 1879. It is printed in Vol. II of this Code.

The Bengal Court of Wards [Ben. Act 1 of 1906.]
(Amendment) Act, 1906.

(Secs. 7-10.)

Insertion of
new section
59A.

7. After section 59 of the said Act^[1] the following shall be inserted, namely:—

59A. [Printed in Vol. II of this Code.]

Insertion of
new section
60B.

8. After section 60A of the Court of Wards Act, 1879^[2] [as amended by the Court of Wards Act (Bengal) Amendment Act, 1892],^[3] the following shall be inserted, namely:—

60B. [Printed in Vol. II of this Code.]

Repeal of
section 62.
New section
64A.

9. Section 62 of the Court of Wards Act, 1879,^[2] is hereby repealed. Ben. Act 9 of 1879.

10. After section 64 of the said Act^[1] the following shall be inserted, 4 of 1892. namely:—

64A. [Printed in Vol. II of this Code.]

^[1] The Court of Wards Act, 1879. It is printed in Vol. II of this Code.

^[2] Printed in Vol. II of this Code.

^[3] Printed in Vol. I of this Code.

[THE BENGAL TENANCY (AMENDMENT) ACT, 1907.]

SECTION.

1. Short title.
2. Repeal of sections 14 and 45 of Act 8 of 1885.
3. Additions to section 1.
4. Amendment of clauses (5) and (10) of section 3.
5. Amendment of sections 12 and 13 (2).
6. Amendment of sections 13 (1) and 15.
7. Amendment of section 16.
8. New Chapter IVA, sections 18A to 18C.
9. Amendment of section 19.
10. Amendment of section 22.
11. Amendment of section 40.
12. New section 40A.
13. Addition to section 52.
14. Amendment of section 58.
15. Amendment of section 67.
16. Amendment of section 69.
17. Amendment of section 75.
18. Amendment of section 88.
19. Amendment of sub-section (2) of section 101.
20. Amendment of section 102.
21. New section 102A.
22. Amendment of section 103B.
23. Amendment of heading to Part II of Chapter X.
24. Amendment of sections 104 and 105.
25. " " use (g), of section 104H.
26. " " " "
27. " " " "
28. Amendment of section 107.
29. Amendment of section 108.
30. New section 108A.
31. Amendment of section 109.
32. Amendment of section 109A.
33. New sections 109B, 109C, and 109D.
34. Amendment of section 111.
35. New section 111B.
36. Amendment of section 112.
37. Amendment of section 114.
38. New section 115A.
39. Addition to heading to Chapter XI.
40. Amendment of section 116.
41. Amendment of section 120.
42. New sections 147A and 147B.
43. Amendment of section 148.
44. New section 148A.
45. Amendment of sections 149 and 150.
46. Addition of *Explanation* to section 153.
47. New section 153A.
48. Amendment of sub-section (1) of section 158.
49. New Chapter XIII A and new section 158A.
50. New section 158B.
51. Addition of clause (c) to section 161.
52. Amendment of section 168.
53. Amendment of sub-section (1) of section 169 and addition of proviso.

SECTION.

54. Amendment of section 170.
55. Amendment of section 174.
56. Amendment of sub-section (3) of section 178.
57. New heading and new section 186A.
58. New section 188A.
59. New clauses (2), (3) and (4) in section 189.
60. Amendment of section 192.
61. Amendment of Schedule III.

BENGAL ACT 1 OF 1907.

[THE BENGAL TENANCY (AMENDMENT) ACT, 1907.][¹]

(22nd May, 1907.)

An Act to amend and supplement the Bengal Tenancy Act, 1885.[²]

Whereas it is expedient to amend the Bengal Tenancy Act, 1885,[³]
in the manner hereinafter appearing;

And whereas the previous sanction of the Governor General has been
obtained under section 5[⁴] of the Indian Councils Act, 1892, to the
passing of this Act;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Tenancy (Amendment) Act, Short title.
1907.

2. Sections 14 and 45 of the Bengal Tenancy Act, 1885,[²] are hereby
repealed.

3. (1) In sub-section (3) of section 1 of the said Act,[⁴] after the
words " the town of Calcutta " the words " any area constituted a Muni-
cipality under the provisions of the Bengal Municipal Act, 1884, or part
thereof, and specified in a notification in this behalf by the Local Govern-
ment " shall be inserted.

(2) To the said sub-section the following *Explanation* shall be added,
namely:—

Explanation.—[Printed in Vol. I of this Code.]

[¹] LEGISLATIVE DEBATE. For Statement of Objects and Reasons, see Calcutta Gazette,
1906, Pt. IV Extraordinary.
see Calcutta Gazette, 1907, Pt. IVA, pp. 11,
16, 153 to 196 and 200 to 210

LOCAL EXTENT.—Since this Act has no local extent clause, it must be taken originally
to have extended to those territories, then comprised in the Province of Bengal, in which
the Bengal Tenancy Act, 1885 (8 of 1885), which this Act amends, was in force. It
now applies to Bihar and to Western Bengal only

The application of the Act is barred in—

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2)
printed in Vol. I, p. 864; and
the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872),
s. 3 (3), as amended by the Sonthal Parganas Justice and Laws Regulation,
1899 (3 of 1899), s. 3, printed in Vol. I, p. 777.

[²] Printed in Vol. I of this Code

[³] Printed in the Collection of Statutes relating to India, 1913, Vol. II, p. 804.

[⁴] The Bengal Tenancy Act, 1885. It is printed in Vol. I of this Code.

Repeal of
sections 14
and 45 of
Act 8 of 1885.
Additions to
section 1.

8 of 1885

55 & 56
Vict., c. 1.

8 of 1885.

Ben. Act 3
of 1884.]

Amendment
of clauses
(5) and (10)
of section 3.

4. In section 3 of the Bengal Tenancy Act, 1885,^[1]—

8 of 1885.

(1) in clause (5), after the word and figures “ Chapter XII,” the word and figures “ Chapter XIV ” shall be inserted;

(2) for clause (10) the following shall be substituted, namely:—

(10) [Printed in Vol. I of this Code.]

Amendment
of sections
12 and 13 (2).

5. (1) To sub-section (2) of section 12 of the said Act^[2] the following shall be added, namely:—

“ together with the costs necessary for the transmission of the landlord’s fee to the landlord.”

(2) In sub-section (3) of the said section, and in sub-section (2) of section 13,—

(i) after the words “ landlord’s fee ” the words “ the costs necessary for the transmission of the same ” shall be inserted;

(ii) for the word “ paid ” the word “ transmitted ” shall be substituted, and

(iii) after the word “ landlord ” the words “ named in the notice ” shall be inserted.

Amendment
of sections
13 (1) and 15.

6. (1) In sub-section (1) of section 13 of the said Act,^[2] after the words “ foregoing section,” and in section 15 after the word and figures “ section 12,” the words “ together with the costs necessary for its transmission to the landlord ” shall be inserted.

(2) In the said section 15,—

(i) for the word “ paid ” the word “ transmitted ” shall be substituted, and

(ii) after the word “ landlord ” the words “ named in the notice ” shall be inserted.

Amendment
of section 16.

7. In section 16 of the said Act,^[2] for the words “ and fees ” the words “ fees and costs ” shall be substituted.

New Chapter
IVA, sections
18A to 18C.

8. After section 18 of the said Act^[2] the following shall be inserted, namely:—

Chapter IVA.—18A to 18C. [Printed in Vol. I of this Code.]

Amendment
of section 19.

9. (1) Section 19 of the Bengal Tenancy Act, 1885^[1] shall be re- 8 of 1885.
numbered section 19, sub-section (1).

(2) In the said sub-section (1), after the words “ this Act,” in both places where they occur, the words, brackets and figures “ or the Bengal Tenancy (Amendment) Act, 1907,” shall be inserted.

Ben. Act 1
of 1907.

^[1] Printed in Vol. I of this Code.

^[2] The Bengal Tenancy Act, 1885. It is printed in Vol. I of this Code.

(Secs. 10-12.)

(3) After the said sub-section (1) the following shall be inserted, namely:—

(2) [Printed in Vol. I of this Code.]

8 of 1885.

10. In section 22 of the Bengal Tenancy Act, 1885,[¹]—

Amendment of section 22.

(a) in sub-section (1), for the words “the occupancy-right shall cease to exist” the words “such person shall have no right to hold the land as a tenant, but shall hold it as a proprietor or permanent tenure-holder (as the case may be)” shall be substituted;

(b) in sub-section (2) for the words from “it shall cease to exist” to the end of the sub-section the following shall be substituted, namely:—

[Printed in Vol. I of this Code.]

(c) in sub-section (3), after the word “acquire” the words “by purchase or otherwise” shall be inserted.

11. In section 40 of the said Act,[²]

(i) in sub-section (1), after the words “partly in another” the words “or partly in any of those ways and partly in cash” shall be inserted; Amendment of section 40.

(ii) in sub-section (2), for the words “an officer making a settlement of rents” the following shall be substituted, namely:—

“a Revenue-officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights;”

(iii) in clause (b) of sub-section (4), the word “and” shall be omitted, and

(iv) to the said sub-section (4) the following shall be added, namely:—

[Printed in Vol. I of this Code.]

12. After section 40 of the said Act[²] the following shall be inserted, New section 40A.
namely:—

40A. [Printed in Vol. I of this Code.]

[¹] Printed in Vol. I of this Code.

[²] The Bengal Tenancy Act, 1885 It is printed in Vol. I of this Code

212 *The Bengal Tenancy (Amendment) Act, 1907.* [Ben. Act
(Secs. 13-19.)

Addition to
section 52.

13. To section 52 of the said Act^[1] the following shall be added, namely:—

(b) [Printed in Vol. I of this Code.]

Amendment
of section 58.

14. For sub-section (3) of section 58 of the said Act^[1] the following shall be substituted, namely:—

(3) to (8) [Printed in Vol. I of this Code.]

Amendment
of section 67.

15. In section 67 of the Bengal Tenancy Act, 1885,^[2]—

8 of 1885.

(a) after the word “twelve” the words “and-a-half” shall be inserted, and

(b) for the words “to the institution of the suit” the words “to the date of payment or of the institution of the suit, whichever date is earlier,” shall be substituted.

Amendment
of section 69.

16. (1) To sub-section (3) of section 69 of the said Act^[1] the following shall be added, namely:—

[Printed in Vol. I of this Code.]

(2) To the said section the following shall be added, namely:—

(4) [Printed in Vol. I of this Code.]

Amendment
of section 75.

17. In section 75 of the Bengal Tenancy Act, 1885,^[2] after the word 8 of 1885. “rent” the words “or interest” shall be inserted.

Amendment
of section 88.

18. (1) In section 88 of the said Act,^[1] for the words “with his consent in writing” the words “with his express consent in writing, or with that of his agent duly authorized in that behalf” shall be substituted.

(2) To the same section the following proviso shall be added, namely:—

[Printed in Vol. I of this Code.]

Amendment
of sub-section
(2) of section
101.

19. In sub-section (2) of section 101 of the said Act,^[1]—

(1) For clause (a) the following clause shall be substituted, namely:—

(a) [Printed in Vol. I of this Code.]

(2) to clause (c) the following shall be added, namely:—

“or a Manager appointed by the District Judge under section 95.”

[¹] The Bengal Tenancy Act, 1885. It is printed in Vol. I of this Code.

[²] Printed in Vol. I of this Code.

(Secs. 20-25.)

20. In section 102 of the said Act,^[1]—Amendment
of section
102.

(1) after clause (d) the following clause shall be inserted, namely:—

“ (dd) the name of each proprietor in the local area or estate,”

(2) after clause (g) the following clause shall be inserted, and shall be deemed to have been so inserted from the commencement of the Bengal Tenancy (Amendment) Act, 1898,^[2] namely:—

(gg) [Printed in Vol. I of this Code.]

(3) after clause (h) the following shall be inserted, namely:—

“ (i) any right or way or other easement attaching to the land for which a record-of-rights is being prepared;”

and the existing clause (i) shall be re-lettered clause (j).

21. After section 102 of the Bengal Tenancy Act, 1885,^[3] so amended, the following shall be inserted, namely:—New section
102A.

102A. [Printed in Vol. I of this Code.]

22. For section 103B of the said Act^[1] the following shall be substituted, namely:—Amendment
of section
103B.

103B. [Printed in Vol. I of this Code.]

23. In the heading to Part II of Chapter X of the said Act,^[1] for the words “decision of disputes” the words “disposal of objections” shall be substituted.Amendment
of heading to
Part II of
Chapter X.24. (1) In clause (b) of section 104, and in sub-section (2) of section 105 of the said Act,^[1] for the word, letter and brackets “clause (z)” the word, letter and brackets “clause (j)” shall be substituted.Amendment
of sections
104 and 105

(2) To the said section 104 the following proviso shall be added, namely:—

[Printed in Vol. I of this Code.]

25. In clause (g) of sub-section (3) of section 104H of the said Act,^[1] for the words “have not been recorded or have” the words “or any right of way or other easement attaching to the land which is the subject of the tenancy have not, or has not, been recorded or have, or has,” shall be substituted.Amendment
of sub-section
(3), clause
(g), of section
104H.^[1] The Bengal Tenancy Act, 1885. It is printed in Vol. I of this Code.^[2] Printed *ante*, p.^[3] Printed in Vol. I of this Code.

New section
105A.

26. After section 105 of the said Act^[1] the following shall be inserted, namely:—

105A. [Printed in Vol. I of this Code.]

Addition of
proviso to
section 106.

27. To section 106 of the said Act^[1] the following proviso shall be added, namely:—

[Printed in Vol. I of this Code.]

Amendment
of section
107.

28. In section 107 of the said Act,^[1]—

(a) in sub-section (1), for the words and figures “In all proceedings for the settlement of rents under this Part, and in all proceedings under section 106” the words, figures and letter “In all proceedings under section 105, section 105A and section 106” shall be substituted, and

(b) for sub-section (2) the following shall be substituted, namely:—

(2) [Printed in Vol. I of this Code.]

Amendment
of section
108.

29. In section 108 of the said Act^[1] after the word and figures “section 105” the word, figures and letter “section 105A” shall be inserted.

New section
108A.

30. After section 108 of the said Act^[1] the following shall be inserted, namely:—

108A. [Printed in Vol. I of this Code.]

Amendment
of section
109.

31. In section 109 of the said Act,^[1] for the words and figures “or suit instituted under section 105, section 106, section 107 or section 108,” the words, figures and brackets “suit instituted or proceedings taken under sections 105 to 108 (both inclusive)” shall be substituted.

Amendment
of section
109A.

32. In sub-section (2) of section 109A of the said Act,^[1] after the figures “108” the letter “A” shall be inserted.

New sections
109B, 109C,
and 109D.

33. In Part IV of Chapter X of the said Act^[1] so amended, immediately before section 110, the following shall be inserted, namely:—

109B to 109D. [Printed in Vol. I of this Code.]

Amendment
of section
111.

34. In section 111 of the said Act,^[1] after the word “entertain” the words and figures “any application made under section 158, or” shall be inserted.

New section
111B.

35. After section 111A of the said Act,^[1] the following shall be inserted, namely:—

111B. [Printed in Vol. I of this Code.]

[¹] The Bengal Tenancy Act, 1885. It is printed in Vol. I of this Code

(Secs. 36-37.)

36. (1) In sub-section (1) of section 112 of the said Act,^[1] for the words "invest a Revenue-officer acting under this Chapter" the following shall be substituted, namely:—

Amendment
of section
112.

"or that any landlord is demanding rents which have been illegally enhanced above those entered as payable in a record-of-rights prepared under this Chapter, invest a Revenue-officer."

(2) After sub-section (2) of the said section the following shall be inserted, namely:—

"(2a) A settlement of rents under this section shall be made in the manner provided by sections 104 to 104J (both inclusive)."

(3) To sub-section (3) of the said section the following shall be added, namely:—

"and the revision, by direction of the Board of Revenue under sub-section (2) of section 104G, of a record-of-rights, or any portion of a record-of-rights, prepared under this section, shall be subject to a like confirmation by the Governor General in Council."

37. In section 114 of the said Act,^[1]—

Amendment
of section
114.

(1) in sub-section (1),—

(a) the words "by the Government" are hereby repealed, and

(b) for the words "from time to time in the maintenance," the following shall be substituted, namely:—

"at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration;"

(c) after the word "proportions" the words and brackets "and in such instalments (if any)," shall be inserted.

(2) after sub-section (1), the following shall be inserted, namely:—

(2) [Printed in Vol. I of this Code.]

(3) the present sub-section (2) shall be re-numbered sub-section (3), and

(4) after sub-section (3), so re-numbered, and before the *Explanation*, the following shall be inserted, namely:—

(4) [Printed in Vol. I of this Code.]

[1] The Bengal Tenancy Act, 1885. It is printed in Vol. I of this Code.

New section
115A.

38. After section 115 of the said Act^[1] the following shall be inserted, namely:—

115A. [Printed in Vol. I of this Code.]

Addition to
heading to
Chapter XI.

39. To the heading to Chapter XI of the Bengal Tenancy Act, 8 of 1885,^[2] the following words shall be prefixed, namely:—

“NON-ACCRUAL OF OCCUPANCY AND NON-OCCUPANCY RIGHTS, AND.”

Amendment
of section
116.

40. In section 116 of the said Act, after the words “shall apply to” the following shall be inserted, namely:—

“lands acquired under the Land Acquisition Act, 1894, for the Government or for any Local Authority or for a Railway Company, or lands belonging to the Government within a Cantonment, while such lands remain the property of the Government or of any Local Authority or Railway Company, or to.”

Amendment
of section
120.

41. After sub-section (2) of section 120 of the Bengal Tenancy Act, 8 of 1885,^[2] the following shall be inserted, namely:—

(2a) [Printed in Vol. I of this Code.]

New sections
147A and
147B.

42. After section 147 of the said Act^[1] the following shall be inserted, namely:—

147A, 147B. [Printed in Vol. I of this Code.]

Amendment
of section
148.

43. (1) After clause (b) of section 148 of the Bengal Tenancy Act, 8 of 1885,^[2] the following shall be inserted, namely:—

(b1), (b2) [Printed in Vol. I of this Code.]

(2) After clause (f) of the same section the following shall be inserted, namely:—

(ff) [Printed in Vol. I of this Code.]

New section
148A.

44. After section 148 of the said Act^[1] the following shall be inserted, namely:—

148A. [Printed in Vol. I of this Code.]

Amendment
of sections
149 and 150.

45. The words “except for special reasons to be recorded in writing,” in sections 149 and 150 of the said Act,^[1] are hereby repealed.

Addition of
Explanation
to section
153.

46. To section 153 of the said Act^[1] the following *Explanation* shall be added, namely:—

Explanation.—[Printed in Vol. I of this Code.]

[¹] The Bengal Tenancy Act, 1885. It is printed in Vol. I of this Code.

[²] Printed in Vol. I of this Code.

(Secs. 47-55.)

47. After section 153 of the said Act^[1] the following shall be inserted, namely:—

New section 153A.

153A. [Printed in Vol. I of this Code.]

8 of 1885. 48. In sub-section (1) of section 158 of the Bengal Tenancy Act, 1885,^[2] before the words "The Court having jurisdiction" the words (1) of section and figures "Subject to the provisions of section 111" shall be inserted. 158.

49. After section 158 of the said the following shall be inserted, namely:—

New Chapter XIII A and new section 158A.

Chapter XIII A.—S.158A. [This section was further revised by Bihar and Orissa Act 4 of 1914, s. 69, printed *post p.* .]

50. In Chapter XIV of the Bengal Tenancy Act, 1885,^[2] immediately before section 159, the following shall be inserted, namely.—

New section 158B.

[²]158B. [Printed in Vol. I of this Code.]

51. To section 161 of the said Act^[1] the following shall be added, namely:—

Addition of clause (c) to section 161.

(c) [Printed in Vol. I of this Code.]

52. In sub-section (1) of section 168 of the said Act,^[1] for the words "decrees for rent" the words "a decree for an arrear of rent" shall be substituted.

Amendment of section 168.

53. (1) In clause (c) of sub-section (1) of section 169 of the said Act,^[1] after the words "the date of" the words "the confirmation of" shall be inserted.

Amendment of sub-section (1) of section 169 and addition of proviso.

(2) To the said sub-section the following proviso shall be added, namely:—

[Printed in Vol. I of this Code.]

54. In section 170 of the said Act,^[1] after the words and brackets " (both inclusive)," the word, figures and letter "and 310A" shall be inserted.

Amendment of section 170.

55. To the proviso to sub-section (2) of section 174 of the said Act^[1] the following shall be added, namely:—

Amendment of section 174.

"and if he applies under this section, he shall not be entitled to make an application under section 311 of the Code of Civil Procedure."

[¹] The Bengal Tenancy Act, 1885. It is printed in Vol. I of this Code.

[²] Printed in Vol. I of this Code.

[³] Sub-section (1) of s. 158B was further revised by B. and O. Act IV of 1914, s. 69, printed *post*, p.

Amendment
of sub-section
(3) of section
178.

56. (1) In proviso (iii) to section 178 of the Bengal Tenancy Act, 8 of 1885,^[1] after the words "cultivation of" the words "horticultural or" shall be inserted.

(2) To the same proviso the following *Explanation* shall be added, namely:—

Explanation.—[Printed in Vol. I of this Code.]

New heading
and new sec-
tion 186A.

57. After section 186 of the said Act^[2] the following shall be inserted, namely:—

"Damages for denial of landlord's title."

188A. [Printed in Vol. I of this Code.]

New section
188A.

58. After section 188 of the said Act^[2] the following shall be inserted, namely:—

188A. [Printed in Vol. I of this Code.]

New clauses
(2), (3) and
(4) in section
189.

59. For sub-section (2) of section 189 of the said Act^[2] the following shall be substituted, namely:—

(2) to (4) [Printed in Vol. I of this Code.]

Amendment
of section
192.

60. In section 192 of the said Act,^[2] before the words "fix a fair and equitable rent" the words "or of his own motion" shall be inserted.

Amendment
of Schedule
III.

61. In Schedule III to the said Act,^[2]—

(1) after Article 1 the following shall be inserted, namely:—

"1 (a) To eject a non-occupancy <i>raiyat</i> on the ground of the expiration of the term of his lease.	Six months . . .	The expiration of the term."
---	------------------	------------------------------

(2) in Article 2,—

(a) after the words "arrear of rent" the following shall be inserted, namely:—

"in a suit brought by—

(i) a sole landlord,

(ii) the entire body of landlords, or

(iii) one or more co-sharer landlords;"

^[1] Printed in Vol. I of this Code.

^[2] The Bengal Tenancy Act, 1885. It is printed in Vol. I of this Code.

(Sec. 61.)

(b) for the entry in the third column opposite clause (b) the following entry shall be substituted, namely:—

“the last day of the agricultural year in which the arrear fell due.”

(3) in Article 3, for the words “an occupancy-*raiyat*” the words “a *raiyat* or an under-*raiyat*” shall be substituted;

(4) in Article 6, for the words “under this Act, or any Act repealed by this Act,” the words “in a suit between landlord and tenant to whom the provisions of this Act are applicable,” shall be substituted.

BENGAL ACT 3 OF 1908.

[THE PURI LODGING-HOUSE (AMENDMENT) ACT, 1908.][¹]

(6th May, 1908.)

**An Act further to amend the Puri Lodging-house Act,
1871.[²]**

Ben. Act 4 of 1871. Whereas it is expedient further to amend the Puri Lodging-house Act, 1871;[²]

It is hereby enacted as follows:—

1. This Act may be called the Puri Lodging-house (Amendment) Short title. Act, 1908.

2. The words “and other towns in Orissa,” in the title and preamble to the Puri Lodging-house Act, 1871,[²] are hereby repealed.

Partial repeal of title and preamble to Ben. Act 4 of 1871.

Ben. Act 4 of 1871. 3. (1) In the definition of “lodger,” in section 1 of the said Act[²] for the words “an inmate” the words “a pilgrim” shall be substituted.

Amendment of section 1.

(2) To the said definition the following shall be added, namely:—
[Printed in Vol. II of this Code.]

4. (1) In section 4 of the said Act,[³]

(a) for the words in the form set forth in Schedule A of this Act” and

Amendment of section 4 and repeal of Schedules A and B.

(b) for the words “in the form set forth in Schedule B of this Act,”

the following words shall respectively be substituted, namely:—
“in such form as the Lieutenant-Governor may, by notification, prescribe in this behalf.”

(2) Schedules A and B to the said Act[²] are hereby repealed.

[¹]LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1908, Pt. IV, pp. 5 and 6; for Proceedings in Council, see *ibid*, Pt. IVA, pp. 11 to 16 and 190 to 198.

LOCAL EXTENT.—Since this Act has no local extent clause, it must be taken originally to have been applicable to the territories then comprised in the Province of Bengal, in which the Puri Lodging-house Act, 1871 (Ben. Act 4 of 1871), which this Act amends, was in force. It now applies, however, only to Bihar and Orissa and to Western Bengal.

As the Puri Lodging-house Act, 1871, applies to the Sonthal Parganas, this Act, also, must be taken to apply to that district. But its application is barred in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I, p. 864.

[²]Printed in Vol. II of this Code.

[³]Puri Lodging-house Act, 1871. It is printed in Vol. II of this Code.

Amendment
of section 7.

5. In section 7 of the said Act,^[1]—

(a) for the word “two” the word “five” shall be substituted;
and

(b) after the word “each” the words “day or” shall be
inserted.

Amendment
of section 8.

6. In section 8 of the said Act,^[1] for the words “a fee, calculated at the rate of eight annas for each person upon the entire number of lodgers mentioned in such license, shall be payable,” the following shall be substituted, namely:—

“a fee shall be payable, calculated upon the entire number of lodgers which is mentioned in the certificate, at such rate, not exceeding one rupee for each lodger, as the Lieutenant-Governor may, by notification, direct.”

Amendment
of section 9.

7. In section 9 of the said Act,^[1] for the words “for twelve calendar months from the day of its date” the words “till the thirty-first day of December of the year in which it is granted” shall be substituted.

Amendment
of section 10.

8. (1) The word “reasonable,” where it first occurs in section 10 of the said Act,^[1] is hereby repealed.

(2) To the said section the following shall be added, namely:—

[Printed in Vol. II of this Code.]

New section
11A.

9. After section 11 of the said Act,^[1] the following shall be inserted, namely:—

[Printed in Vol. II of this Code.]

New section
12A.

10. After section 12 of the Puri Lodging-house Act, 1871,^[2] the following shall be inserted, namely:—

12A. [Printed in Vol. II of this Code.]

Amendment
of section 13.

11. In section 13 of the said Act,^[1] for the word “inmates” the word “lodgers” shall be substituted.

Amendment
of section 14.

12. For section 14 of the said Act,^[1] the following shall be substituted, namely:—

14. [Printed in Vol. II of this Code.]

Amendment
of section 17.

13. (1) The portion of section 17 of the said Act,^[1] from the words “Every keeper of a lodging-house” to the words “suspension of his

[¹] The Puri Lodging-house Act, 1871. It is printed in Vol. II of this Code.

[²] Printed in Vol. II of this Code.

(Secs. 14-16.)

license" shall be re-numbered section 17, sub-section (1); and the remainder shall be numbered sub-section (2).

(2) In the said sub-section (1), for the word "inmates," in both places in which it occurs, the word "lodgers" shall be substituted, and for the words "an inmate of" the words "a lodger in" shall be substituted.

(3) The words "and of the number of lodgers mentioned in such license," in the said sub-section (1), are hereby repealed.

(4) To the said sub-section (1) the following shall be added, namely:—

"shall be liable to be punished by a fine not exceeding five rupees for each lodger so found."

(5) In the said sub-section (2),—

(a) for the words "or who shall refuse or neglect" the words "Every keeper of a lodging-house who refuses or neglects" shall be substituted; and

(b) after the words "thereunto required or" the words and figures "who fails, without reasonable cause, to maintain the register prescribed by section 12A, or to make any entry therein which is prescribed by that section, or" shall be inserted.

New section 21A. 14. After section 21 of the said Act,[¹] the following shall be inserted, namely:—

21A. [Printed in Vol. II of this Code.]

Amendment of section 36. 15. In section 36 of the said Act,[¹] for the words "one month" the words "two months" shall be substituted.

Repeals. 16. The enactments specified in the Schedule are hereby repealed to the extent mentioned in the third column thereof.

[¹] The Puri Lodging-house Act, 1871. It is printed in Vol. II of this Code.

The Puri Lodging-house [Ben. Act 3 of 1908.]
(Amendment) Act, 1908.

(The Schedule.)

THE SCHEDULE.

(See section 16.)

ENACTMENTS REPEALED.

Number and year.	Short title.	Extent of repeal.
1	2	3
[¹] Bengal Act II of 1879 .	The Puri Lodging-house (Extension) Act, 1879.	In section 3, the following words and figures, namely— “in section 7, after the word ‘each’ the words ‘day or’ shall be inserted”; “and Schedule B;” “in lieu of the words ‘the rate of eight annas’ in section 3, shall be substituted the words ‘a rate not exceeding one rupee;’” and “in lieu of the last five words in section 14 shall be substituted the words ‘in the character of the vernacular of the district.’”
[¹] Bengal Act I of 1884 .	The Puri Lodging-house (Extension) Act, 1884.	So much as has not been repealed.

[¹] Printed in Vol. II of this Code.

BENGAL ACT 5 OF 1908.

[THE BENGAL LOCAL SELF-GOVERNMENT (AMENDMENT) ACT, 1908.]

CONTENTS.

SECTION.

1. Short title.
2. Repeal of portions of Bengal Act 3 of 1885.
3. Addition to section 5.
4. Amendment of sections 7, 11 and 15.
5. New section 10.
6. Amendment of proviso to section 13.
7. Amendment of section 17.
8. Amendment of section 18.
9. New section 18A.
10. New sections 19 and 19A.
11. Amendment of section 22.
12. New section 23A.
13. Amendment of section 25.
14. New sections 26 and 26A.
15. Amendment of section 27.
16. New sections 29 and 29A.
17. Amendment of section 32.
18. Amendment of section 33.
19. New section 35.
20. New section 35A.
21. Amendment of section 36.
22. New section 41A.
23. Amendment of section 44.
24. Addition to section 48.
25. Addition to section 50.
26. Amendment of section 52.
27. Amendment of section 53.
28. New section 53A.
29. Amendment of section 56.
30. Amendment of section 58.
31. Amendment of section 59.
32. Amendment of section 60.
33. New section 61.
34. New section 63.
35. New section 64A.
36. Amendment of section 65.
37. New sections 65A and 65B.
38. Addition to section 67.
39. Amendment of section 73.
40. New section 78A.
41. Amendment of section 82.
42. Addition to section 86.
43. New heading and new sections 86A to 86M.
44. New section 89A.
45. New section 91.
46. Amendment of section 99.
47. New section 99A.
48. Amendment of section 100.
49. Amendment of section 104.
50. Amendment of sections 105 to 107.
51. Amendment of sections 108 and 109.
52. Amendment of section 110.
53. New section 111.

BENGAL ACT 5 OF 1908.

[THE BENGAL LOCAL SELF-GOVERNMENT (AMENDMENT) ACT, 1908.][¹]

(28th October, 1908.)

An Act to amend the Bengal Local Self-Government Act of 1885.[²]

Ben. Act 3 of 1885. Whereas it is expedient to amend the Bengal Local Self-Government Act of 1885[²] in manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Local Self-Government Short title (Amendment) Act, 1908.

Ben. Act 3 of 1885. 2. The following portions of the Bengal Local Self-Government Act of 1885[²] are hereby repealed, namely:—

Repeal of portions of Bengal Act 3 of 1885.

in section 1, the words “or of the districts Singhbhum, the Sonthal Parganas or the Chittagong Hill-tracts;”
in the proviso to section 6, the words “and in any other subdivision to which the provisions of the next succeeding Chapter shall have been extended;”

section 16;

section 24;

the last paragraph of section 25;

section 34;

section 72;

the proviso to section 73, and

in section 103, the words “A Local Board shall exercise powers of supervision and control over all Union Committees within the area under its authority, and,”

1908. a Gazette, 11 to 17; Pt. IV, p. 202, 216

LOCAL EXTENT.—Since this Act has no local extent clause, it must be taken originally to have extended to those territories, at the time comprised in the Province of Bengal, in which the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), which this Act amends, was in force. It therefore extends by its operation to Bihar and Orissa and to Western Bengal

The application of the Act is barred in—

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s 3 (2) printed in Vol. I, p. 864; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 777.

[¹] Printed in Vol. II of this Code.

228 *The Bengal Local Self-Government (Amendment) [Ben. Act
Act, 1908.
(Secs. 3-9.)*

Addition to
section 5.

3. To section 5 of the said Act,^[1] the following shall be added, namely:—

“and ‘sanitation’ includes water-supply.”

Amendment
of sections 7,
11 and 15.

4. (1) In section 7 of the said Act,^[1] after the figures “22” the words, figures and letter “section 23A or section 29” shall be inserted.

(2) For the words “Lieutenant-Governor,” where they occur in the sixth paragraph of section 7, in section 11, and in the first paragraph of section 15 of the said Act,^[1] the word “Commissioner” shall be substituted.

New section
10.

5. For section 10 of the said Act,^[1] the following shall be substituted, namely:—

10. [Printed in Vol. II of this Code.]

Amendment
of proviso to
section 13.

6. In clause (2) of the proviso to section 13 of the said Act,^[1] for the words “the area under the authority of such Local Board” the words “the sub-division for which such Local Board has been established” shall be substituted.

Amendment
of section 17.

7. In section 17 of the said Act,^[1] for the words “Lieutenant-Governor” and for the word “Commissioner,” in both places in which they respectively occur, the word “Commissioner” and the words “District Board,” respectively, shall be substituted.

Amendment
of section 18.

8. (1) Section 18 of the said Act^[1] shall be re-numbered section 18, sub-section (1).

(2) In the said sub-section (1),—

(i) for the words “Lieutenant-Governor,” wherever they occur, the word “Commissioner” shall be substituted;

(ii) for the words “or Local Board” the words “Local Board or Union Committee” shall be substituted;

(iii) in clause (a), the words from “or is convicted” to the words “unfits him to be a member” are hereby repealed.

(3) To the said section the following shall be added, namely:—

“(2) Any member who is removed under sub-section (1) may appeal to the Lieutenant-Governor, whose decision shall be final.”

New section
18A.

9. After section 18 of the said Act,^[1] the following shall be inserted, namely:—

18A. [Printed in Vol. II of this Code.]

^[1]The Bengal Local Self-Government Act of 1885. It is printed in Vol. II of this Code.

10. For section 19 of the said Act,^[1] the following shall be substituted, namely:— New sections 19 and 19A.

19, 19A. [Printed in Vol. II of this Code.]

11. In section 22 of the said Act,^[1] after the word “elected” the words “either by name or by virtue of his office” shall be inserted. Amendment of section 22.

12. After section 23 of the said Act,^[1] the following shall be inserted, namely:— New section 2A.

23A. [Printed in Vol. II of this Code.]

13. In section 25 of the said Act,^[1]—

(a) after the word “elected” the words “either by name or by virtue of his office” shall be inserted; and Amendment of section 25.

(b) for the words “Lieutenant-Governor,” in the first, second, fourth and fifth places in which they occur, the word “Commissioner” shall be substituted.

14. For section 26 of the said Act,^[1] the following shall be substituted, namely:— New sections 26 and 26A.

26, 26A. [Printed in Vol. II of this Code.]

15. In section 27 of the said Act,^[1] for the words “to the Lieutenant-Governor; and, on such resignation being accepted,” the following shall be substituted, namely:— Amendment of section 27.

“in the case of a Chairman of a District Board, to the Lieutenant-Governor, and, in the case of a Chairman of a Local Board, to the Commissioner; and, on such resignation being accepted by the Lieutenant-Governor or Commissioner, as the case may be.”

16. For section 29 of the said Act,^[1] the following shall be substituted, namely:— New sections 29 and 29A.

29, 29A. [Printed in Vol. II of this Code.]

17. In section 32 of the said Act,^[1]—

(a) for the words “Every District Board, and every Local Board with the sanction of the District Board,” the following shall be substituted, namely:— Amendment of section 32.

“Any District Board, with the sanction of the Commissioner and subject to the control of the Lieutenant-Governor, and any Local Board, with the sanction of the District Board and of the Commissioner and subject to the control of the Lieutenant-Governor;”

[¹] The Bengal Local Self-Government Act of 1885. It is printed in Vol. II of this Code.

(Secs. 18-24.)

(b) for the words "leave, suspension and removal," in clause (g), the words "leave, leave allowance and punishment (including suspension and removal)" shall be substituted;

(c) after the words "and may" the words "with the like sanction and subject to the like control" shall be inserted; and

(d) for the concluding paragraph the following shall be substituted, namely:—

"All rules made under this section, and all orders repealing or altering any such rules, shall be published in such manner as the Lieutenant-Governor may direct; and, so far as they are consistent with this Act and with any rules made by the Lieutenant-Governor hereunder, shall, upon such publication, have the force of law."

Amendment of section 33. **18.** In section 33 of the said Act,^[1] after the words and figures "under section 30" the following shall be inserted, namely:—

"or by an Education Committee referred to in section 65B."

New section 35. **19.** For section 35 of the said Act,^[1] the following shall be substituted, namely:—

35. [Printed in Vol. II of this Code.]

New section 35A. **20.** After section 35 of the said Act,^[1] the following shall be inserted, namely:—

35A. [Printed in Vol II of this Code.]

Amendment of section 36. **21.** In the proviso to section 36 of the said Act,^[1] for the words "the Local Board to which the Union Committee creating such appointment is subordinate" the words "the District Board" shall be substituted.

New section 41A. **22.** After section 41 of the said Act,^[1] the following shall be inserted, namely:—

41A. [Printed in Vol. II of this Code.]

Amendment of section 44. **23.** In section 44 of the said Act,^[1] for the words "the Local Board to which it is subordinate as hereinafter provided," and for the words "the Local Board," the words "the District Board" shall be substituted.

Addition to section 48. **24.** To section 48 of the said Act,^[1] the following shall be added, namely:—

[Printed in Vol. II of this Code.]

[¹] The Bengal Local Self-Government Act of 1885. It is printed in Vol. II of this Code.

5 of 1908.] The Bengal Local Self-Government (Amendment) Act, 1908. 231

(Secs. 25-27.)

25. To section 50 of the said Act,[¹] the following shall be added, Addition to section 50.
namely:—

[Printed in Vol. II of this Code.]

26. (1) After clause (1) of section 52 of the said Act,[¹] the following shall be inserted, namely:— Amendment of section 52.

“(1a) all sums received under any loan raised under section 50.”

(2) For clause (3) of the said section 52, the following shall be substituted, namely:—

“(3) all sums directed by notification under section 31 of the Cattle-trespass Act, 1871, to be placed to the credit of the Fund.”

I of 1871.

(3) After clause (5) of the said section 52, the following shall be inserted, namely:—

“(5a) all receipts accruing within the district from tolls or leases under Part III, heading D (1), of this Act.”

(4) Before the final sentence of the said section 52, the following shall be inserted, namely:—

“The balance of the District Road Fund mentioned in clause (1) of this section shall be placed to the credit of the District Fund under a separate head.”

Ben. Act 3 of 1885.

27. (1) In the first line of section 53 of the Bengal Local Self-Government Act of 1885,[²] after the words “the District Fund shall” the following shall be inserted, namely:— Amendment of section 53.

Ben. Act 9 of 1880.

subject to the provisions of section 109 of the Cess Act, 1880, as amended by this Act.”

(2) In clause *Fourthly* of the said section 53, after the figures “35,” the following shall be inserted, namely:—

“and of any grants made for supplementing contributions by members of such establishments to any Provident Fund created under section 35A.”

(3) For clause *Fifthly* of the same section, the following shall be substituted, namely:—

Fifthly.—[Printed in Vol. II of this Code.]

(4) In clause *Sixthly* of the same section, for the words “of the travelling expenses incurred by members of the District Board in

[¹] The Bengal Local Self-Government Act of 1885. It is printed in Vol. II of this Code.

[²] Printed in Vol. II of this Code.

(Secs. 28-36.)

attending meetings of the Board or meetings of a Joint Committee," the following shall be substituted, namely:—

(a) to (d) [Printed in Vol. II of this Code.]

(5) In proviso (1) to the said section 53, after the word "that" the words, figures and letter "except as is provided in section 99A" shall be inserted.

(6) After proviso (2) to the said section 53, the following shall be inserted, namely:—

(3) [Printed in Vol. II of this Code.]

28. After section 53 of the Bengal Local Self-Government Act of 1885,^[1] the following shall be inserted, namely:—

Ben. Act 3 of 1885.

53A. [Printed in Vol. II of this Code.]

29. For clause (1) of section 56 of the Bengal Local Self-Government Act of 1885,^[1] the following shall be substituted, namely:—

Ben. Act 3 of 1885.

"(1) all sums directed by notification under section 31 of the Cattle-trespass Act, 1871, to be placed to the credit of the Fund." 1 of 1871.

30. In section 58 of the Bengal Local Self-Government Act of 1885,^[1] for the words "the Local Board to which such Union Committee is subordinate" the words "the District Board" shall be substituted.

Ben. Act 3 of 1885.

31. In section 59 of the said Act,^[2] for the letter "D" the letter "E" shall be substituted.

32. In section 60 of the said Act,^[2] for the letter "E" the letter "F" shall be substituted.

33. For section 61 of the said Act,^[2] the following shall be substituted, namely:—

61. [Printed in Vol. II of this Code.]

34. For section 63 of the Bengal Local Self-Government Act of 1885,^[1] the following shall be substituted, namely:—

Ben. Act 3 of 1885.

63. [Printed in Vol. II of this Code.]

35. After section 64 of the said Act,^[2] the following shall be inserted, namely:—

64A. [Printed in Vol II of this Code.]

36. In section 65 of the said Act,^[2] for the words "the improvement of primary schools within the district under private management," the following shall be substituted, namely:—

(a) to (c). [Printed in Vol. II of this Code.]

^[1] Printed in Vol. II of this Code.

^[2] The Bengal Local Self-Government Act of 1885. It is printed in Vol. II of this Code.

5 of 1908.] The Bengal Local Self-Government (Amendment) Act, 1908. 233

(Secs. 37-46.)

37. After section 65 of the said Act,^[1] the following shall be inserted, namely:—

New sections 66A and 65B.

65A, 65B. [Printed in Vol. II of this Code.]

Ben. Act 3 of 1885.

38. To section 67 of the Bengal Local Self-Government Act of 1885,^[2] the following shall be added, namely:—

Addition to section 67.

[Printed in Vol. II of this Code.]

39. In section 73 of the said Act,^[1] after the words “for the purposes of this Act” the words and figures “but subject to the provisions of Chapter III of Part III thereof” shall be inserted.

Amendment of section 73.

40. After section 78 of the said Act,^[1] the following shall be inserted, namely:—

New section 74A.

78A. [Printed in Vol. II of this Code.]

41. (1) In section 82 of the said Act,^[1] for the words “Lieutenant-Governor” the words “Governor General in Council” shall be substituted.

Amendment of section 82.

(2) To the same section the following shall be added, namely:—

[Printed in Vol. II of this Code.]

42. To section 86 of the said Act,^[1] the following shall be added, namely:—

Addition to section 86.

[Printed in Vol. II of this Code.]

43. After section 86 of the said Act,^[1] the following shall be inserted, namely:—

New heading and new sections 86A to 86M.

“D (1).—Tolls on Bridges.

86A to 86M. [Printed in Vol. II of this Code.]

44. After section 88 of the said Act,^[1] the following shall be inserted, namely:—

New section 88A.

88A. [Printed in Vol. II of this Code.]

Ben. Act 3 of 1885.

45. For section 91 of the Bengal Local Self-Government Act of 1885,^[2] the following shall be substituted, namely:—

New section 91.

91. [Printed in Vol. II of this Code.]

46. (1) In the heading over section 99 of the said Act,^[1] for the word “Relief” the words “and Distress” shall be substituted.

Amendment of section 99.

(2) In the said section, after the word “famine” the words “or serious distress” shall be inserted.

^[1]The Bengal Local Self-Government Act of 1885. It is printed in Vol. II of this Code.

^[2]Printed in Vol. II of this Code.

(Secs. 47-51.)

(3) To the said section the following shall be added, namely:—

“(4) distribute such gratuitous relief, in the form of doles of money or food, as may be necessary.”

New section
99A.

47. After section 99 of the said Act,[¹] the following shall be inserted, namely:—

99A. [Printed in Vol. II of this Code.]

Amendment
of section 100.

48. (1) In section 100 of the said Act,[¹] for the words “subject to any rules made by the Lieutenant-Governor.” the words “subject to such rules and restrictions as the Lieutenant-Governor may, from time to time, prescribe” shall be substituted.

(2) In clause (3) of the said section for the words “its,” the word “the” shall be substituted.

(3) After the said clause (3), the following shall be inserted, namely:—

(3a) to (3d) [Printed in Vol. II of this Code.]

Amendment
of section
101.

49. In section 104 of the said Act,[¹] for the words “Local Board,” in both places in which they occur, the words “District Board” shall be substituted.

Amendment
of sections
105 to 107.

50. (1) In sections 105, 106 and 107 of the said Act,[¹] for the words “Local Board,” wherever they occur, the words “District Board,” shall be substituted.

(2) In the said section 105, for the words “an estimate of the probable expenditure of the Committee,” the words “an estimate of the probable receipts and expenditure of the Committee under each head of account” shall be substituted.

(3) To the said section 105 the following shall be added, namely:—

“Every estimate submitted under this section shall be subject to the sanction of the District Board, who may, before sanctioning any estimate, modify it as they may think fit.”

(4) In the said section 107, after the words “village roads,” the words “and bridges thereon” shall be inserted.

Amendment
of sections
108 and 109.

51. (1) After the words “village roads,” in section 108 of the said Act,[¹] and where they first occur in section 109 thereof, the words “and bridges thereon” shall be inserted.

(2) In the said section 108, after the words “such roads” the words “and bridges” shall be inserted.

[¹] The Bengal Local Self-Government Act of 1885. It is printed in Vol. II of this Code.

(Secs. 52-58.)

(3) After the word "road," in clauses (c) and (d) of the said section 109, the words "or bridge thereon" shall be inserted.

52. In section 110 of the said Act,[¹]

Amendment
of section
110.

(a) for the words "Local Board," in the first and third places in which they occur, the words "District Board" shall be substituted; and

(b) for the words "Local Board," in the second place in which they occur, the words "District Board or of a Local Board" shall be substituted.

53. For section 111 of the said Act,[¹] the following shall be substituted, namely:—

New section
114.

111. [Printed in Vol. II of this Code.]

Ben. Act 3 of 1885. 54. For section 114 of the said Bengal Self-Government Act of 1885,[²] the following shall be substituted, namely:—

New section
114.

114. [Printed in Vol. II of this Code.]

55. For sections 115 to 119 of the said Act,[¹] the following shall be substituted, namely:—

New sections
115 to 119.

115 to 119. [Printed in Vol. II of this Code.]

56. (1) In the first paragraph of section 130 of the said Act,[¹]

Amendment
of section
130.

(a) after the figures "124" the figures "125" shall be inserted, and

(b) for the words "by the Local Board" the words and figures "by the District Board or the Local Board to which the Committee may have been declared, by an order under section 119, to be, for the purposes of this section, subordinate" shall be substituted.

(2) In the third paragraph of the same section, after the words "Local Board" the words "or Union Committee" shall be inserted.

57. In section 131 of the said Act,[¹] after the words "Local Board," in both places in which they occur, the words "or Union Committee" shall be inserted.

Amendment
of section
131.

58. In section 132 of the said Act,[¹]

Amendment
of section
132.

(1) after the words "Local Board," in the first four places in which they occur, the words "or Union Committee" shall be inserted, and

[¹] The Bengal Local Self-Government Act of 1885. It is printed in Vol. II of this Code.

[²] Printed in Vol. II of this Code.

(Secs. 59-60.)

(2) after the words "the Board," in the second place in which they occur, the words "or Committee" shall be inserted.

New section
133.

59. For sections 133 and 134 of the said Act,[¹] the following shall be substituted, namely:—

133. [Printed in Vol. II of this Code.]

Amendment
of section
138.

60. (1) To clause (a) of section 138 of the said Act,[¹] the following shall be added, namely:—

"and determining the authority who shall decide disputes relating to such elections."

(2) In clause (f) of the same section, for the word "immediate" the word "intermediate" shall be substituted:

(3) To clause (g) of the same section, the following shall be added, namely:—

"and declaring what circumstances shall be a disqualification for continuance of employment under that section."

(4) After clause (h) of the same section, the following shall be inserted, namely:—

(h1), (h2) [Printed in Vol. II of this Code.]

(5) After clause (j) of the same section, the following shall be inserted, namely:—

(j1) to (j3) [Printed in Vol. II of this Code.]

(6) to clause (k) of the said section 138, the following shall be added, namely:—

"the training and employment of compounders, midwives and veterinary practitioners, and the promotion of free vaccination."

(7) To clause (m) of the same section, the following shall be added, namely:—

"and prescribing conditions precedent to the making of any contribution under section 79."

(8) After clause (m) of the said section 138, the following shall be inserted, namely:—

(m1), (m2) [Printed in Vol. II of this Code.]

(9) In clause (n) of the said section 138, after the words "District Boards" the words "and Sanitation Committees" shall be inserted.

[¹] The Bengal Local Self-Government Act of 1885. It is printed in Vol. II of this Code.

(Secs. 61-64.)

(10) After clause (o) of the said section 138, the following shall be inserted, namely:—

“(o1) regulating the duties of District Boards in regard to the relief of famine, serious distress or scarcity.”

(11) In clause (p) of the same section, after the word “animals,” the following shall be inserted, namely:—

“the establishment and maintenance of veterinary dispensaries, the appointment and payment of qualified persons to prevent and treat diseases of horses, cattle and other animals, the improvement of the breed of horses, cattle or asses, and the breeding of mules, the making of grants-in-aid under clause (3d) of section 100 of this Act.”

(12) After clause (q) of the same section, the following shall be inserted, namely:—

(q1) [Printed in Vol. II of this Code.]

(13) To the same section the following shall be added, namely:—

“In making any rule under clause (q1) of this section, the Lieutenant-Governor may provide that a breach of the same shall be punished with fine which may extend to ten rupees.”

61. In section 139 of the said Act,[1]—

(a) before the words “make by-laws” the words “subject to the control of the Lieutenant-Governor” shall be inserted; and

(b) for the words “confirmed by the Lieutenant-Governor” the words “confirmed by the Commissioner” shall be substituted.

Amendment
of section
139.

62. In section 142 of the said Act,[1] before the words “or Union Committee” the words “Local Board” shall be inserted.

Amendment
of section 142.

63. To section 144 of the said Act,[1] the following shall be added, namely:—

“Nothing in this section shall apply to the payment of fees to a legal practitioner for services rendered by him in his professional capacity.”

Addition
to section
144.

64. In the third column of the Second Schedule to the said Act,[1] after the words “shall be credited to the District Fund of the district” the following shall be inserted, namely:—

Amendment
of schedule II.

[1] The Bengal Local Self-Government Act of 1885. It is printed in Vol. II of this Code.

(Sec. 64.)

“and shall be applicable to the following objects, and in the following order, namely:—

- (a) the payment of any sums which the District Board may, under the Bengal Local Self-Government Act of 1885, from time to time have undertaken to pay as interest on loans raised for expenditure on any of the objects to which the District Road Funds is applicable, and the repayment of such loans; Ben. Act 3 of 1885.
- (b) the payment of the percentage referred to in clause *Thirdly* of section 53 of the said Act;
- (c) the payment of such of the salaries, pensions, gratuities, grants and percentages referred to in clause *Fourthly* of the said section as are required for members of establishments employed for improving the means of communication within the district or between the district and other districts;
- (d) payment of such of the expenses referred to in clause *Fifthly* of section 53 of the said Act as are incurred in improving the means of communication within the district or between the district and other districts, or in carrying out the provisions of section 79 of the said Act;
- (e) the payment of the expenses referred to in clause *Seventhly* of section 53 of the said Act; and
- (f) the making of investments referred to in clause *Eighthly* of the said section 53.”

BENGAL ACT 6 OF 1908.
(THE CHOTA NAGPUR TENANCY ACT, 1908.)

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title and extent.
2. Repeal.
3. Definitions.

CHAPTER II.

CLASSES OF TENANTS

4. Classes of tenants.
5. Meaning of "tenure-holder."
6. Meaning of "raiya."
7. Meaning of "raiya having khunt-katti rights."
8. Meaning of "Mundari khunt-kattidar."

CHAPTER III.

TENURE-HOLDERS.

9. Tenure-holder when not liable to enhancement of rent.
10. Certain bhumihars not liable to enhancement of rent.
11. Registration of certain transfers of tenures.
12. Procedure on refusal of landlord to allow registration of transfer of tenure.
13. Division of tenure or distribution of rent.
14. Annulment of incumbrances on resumption of resumable tenure.
15. Saving of rights of landlord.

CHAPTER IV.

OCCUPANCY-RAIYATS.

General.

SECTION.

16. Continuance of existing occupancy-rights.
17. Definition of "settled raiya."
18. Bhumihars and Mundari khunt-kattidars to be settled raiyats in certain cases.
19. Settled raiyats to have occupancy-rights.
20. Effect of acquisition of occupancy-right by landlord.

Incidents of occupancy-right.

21. Rights of occupancy-raiyat in respect of use of land.
22. Protection of occupancy-raiyat from eviction except on specified grounds.
23. Devolution of occupancy-right on death.
24. Obligation of occupancy-raiyat to pay rent.

SECTION.

Enhancement of Rent.

25. Presumption that rent of occupancy-raiyat is fair and equitable.
26. Confirmation of rents enhanced prior to commencement of this Act.
27. Methods in which rent of occupancy-raiyat may be enhanced.
28. Contents of application to Deputy Commissioner for enhancement.
29. Procedure on receipt of such application.
30. Power to direct gradual enhancement.

Increase of Rent in respect of Excess Area.

31. Application for increase of rent in respect of land held in excess of the area for which rent was previously paid.
32. Procedure on receipt of such application.
33. Savings.

Reduction of Rent.

34. Application to Deputy Commissioner for reduction of rent.
35. Procedure on receipt of such application.

Bar to further enhancement or reduction of Rent.

36. Bar to further enhancement or reduction of rent where there is no record-of-rights.

CHAPTER V.

RAIYATS HAVING KHUNT-KATTI RIGHTS.

37. Incidents of tenancy of raiyat having khunt-katti rights.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

38. Initial rent and lease of non-occupancy-raiyat.
39. Effect of acquisition by landlord of the right of a non-occupancy-raiyat in his holding.
40. Conditions of enhancement of rent of non-occupancy-raiyat.
41. Grounds on which non-occupancy-raiyat may be ejected.
42. Conditions of ejectment on ground of refusal to agree to pay a fair and equitable rent.

CHAPTER VII.

LANDS EXEMPTED FROM CHAPTERS IV AND VI.

43. Bar to acquisition of right of occupancy in, and to application of Chapter VI to, landlords' privileged lands and certain other lands.

CHAPTER VIII.

LEASES AND TRANSFERS OF HOLDINGS AND TENURES.

44. Raiyat entitled to a lease.
45. Landlord entitled to counterpart engagement.
46. Restrictions on transfer of their rights by raiyats.
47. Restrictions on sale of raiyats' rights under order of Court.
48. Restrictions on transfer and sale of bhuinhari tenures.

SECTION.

49. Transfer of occupancy-holding or bhuinhari tenure for certain purposes.
50. Acquisition of holding by landlord for certain purposes.
51. Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

CHAPTER IX.

GENERAL PROVISIONS AS TO RENT.

Payment of Rent.

52. Instalments.
53. Methods of payment of rent.
54. Receipts for rent and interest thereon.
55. Deposit of rent in Court of Deputy Commissioner.
56. Procedure on receipt of deposit, and payment of same.
57. Limitation of suit or application for rent due prior to deposit

Arrears of Rent.

58. What to be deemed arrear of rent; interest on arrears.
59. Ejectment of tenure-holder and cancellation of lease for arrears
60. Arrear of rent to be first charge on tenancy.

Commutation of Rent payable in kind.

61. Commutation of rent payable in kind.
62. Period for which commuted rents are to remain unaltered.

Penalties for illegal exaction of rent or prædial conditions.

63. Penalty on landlord levying anything in excess of rent or lawful prædial conditions.

CHAPTER X.

MISCELLANEOUS PROVISIONS AS TO LANDLORD AND TENANT.

Korkar.

64. Cases in which consent of landlord is required for conversion of land into korkar.
65. Power to eject cultivator or leave him in possession.
66. Prohibition against conversion of certain land into korkar.
67. Right of occupancy in korkar.

Ejectment.

68. Tenant not to be ejected except in execution of decree or order.
69. Relief against forfeitures.
70. Decree or order for ejectment when to take effect.
71. Power to replace in possession tenant unlawfully ejected.

Surrender and Abandonment.

72. Surrender of land by raiyat.
73. Abandonment of land by raiyat.

Continuance of Occupation.

74. Effect of lease purporting to admit to occupation after occupation has commenced.

Measurements.

SECTION.

75. Measurement of lands.

CHAPTER XI.

CUSTOM AND CONTRACT.

76. Saving of custom.
 77. Saving as to service tenures and holdings.
 78. Homesteads.
 79. Restrictions on exclusion of Act by agreement.

CHAPTER XII.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS

80. Power to order survey and preparation of record-of-rights.
 81. Particulars to be recorded.
 82. Power to order survey and preparation of record-of-rights as to water.
 83. Preliminary publication, amendment and final publication of record-of-rights.
 84. Presumptions as to final publication and correctness of record-of-rights.
 85. Settlement of fair rents.
 86. Decision of issues arising during course of settlement of rents.
 87. Institution of suits before Revenue-officer.
 88. Entry in record-of-rights of rents settled and decisions made.
 89. Revision by Revenue-officer.
 90. Correction by Revenue-officer of mistakes in record-of-rights.
 91. Stay of certain proceedings before Deputy Commissioner or Civil Court when order made for preparation of record-of-rights.
 92. Bar to jurisdiction of Courts in matters relating to record-of-rights.
 93. Stay of certain proceedings before Deputy Commissioner or Civil Court when record-of-rights finally published.
 94. Period for which rents entered in the record-of-rights are to remain unaltered.
 95. Expenses of proceedings under this Chapter.
 96. Power of Revenue-officer to give effect to agreement or compromise.
 97. Date from which settled rent takes effect.
 98. Revision of record-of-rights, and new settlement of rents, under orders of Local Government.
 99. Enhancement of rent where application under section 98 is rejected.
 100. Validation of directions given, before the commencement of this Act, for the record of certain rights.

CHAPTER XIII.

PRÆDIAL CONDITIONS, AND THE COMMUTATION AND RECORD THEREOF.

101. Prohibition against new prædial conditions.
 102. Liability of tenant when original conditions of tenancy cannot be ascertained.
 103. Method of calculating present value of prædial conditions.
 104. Procedure in suit for rent and value of prædial conditions.
 105. Voluntary commutation of prædial conditions.
 106. Power to order record of prædial conditions, with or without commutation.
 107. Preparation of record.
 108. Publication of record.
 109. Appeal from orders of Revenue-officers.
 110. Revision by Commissioner or Board.
 111. Procedure where a survey and record-of-rights are being made.
 112. Note of decisions in record-of-rights.
 113. Decision of question as to whether a payment in kind is a prædial condition or a payment of rent in kind.
 114. Commencement and effect of commutation.
 115. Expenses of voluntary commutation.

SECTION.

- 116. Expenses of record and compulsory commutation.
- 117. Saving of right to claim reduction or enhancement of rent.

CHAPTER XIV.

RECORD OF LANDLORDS' PRIVILEGED LANDS

- 118. Definition of "landlords' privileged lands."
- 119. Power to direct a survey and record of landlords' privileged lands.
- 120. Application of certain sections.
- 121. Power to record landlords' privileged lands on application of landlord or tenant.
- 122. Procedure in inquiries
- 123. Presumption that lands are not landlords' privileged lands.
- 124. No land in certain villages to be recorded as landlords' privileged lands.
- 125. Exclusion of unrecorded lands from category of landlords' privileged lands.
- 126. Appeal

CHAPTER XV.

RECORD-OF-RIGHTS AND OBLIGATIONS OF RAIYATS HAVING KHUNT-KATTI RIGHTS,
VILLAGE HEADMEN AND OTHER CLASSES OF TENANTS

- 127. Record-of-rights and obligations of raiyats having khunt-katti rights, village headmen and other classes of tenants.
- 128. Application of certain sections.
- 129. Notice of entries to interested persons.
- 130. Suits to decide disputes as to entries in, or omission from, record
- 131. Note of final decisions in record
- 132. Evidential value of entries.
- 133. Revenue-officer to have regard to origin and nature of tenancy and status of tenant.
- 134. Exclusion of unrecorded lands from category of khunt-katti lands

CHAPTER XVI.

JUDICIAL PROCEDURE IN MATTERS COGNIZABLE BY THE DEPUTY COMMISSIONER.

- 135. Place for holding Deputy Commissioner's Court.
- 136. Office for instituting suits and making applications.
- 137. Withdrawal of suits.
- 138. Jurisdiction where land is situated in more than one district or sub-division
- 139. Certain suits and applications cognizable only by the Deputy Commissioner.
- 140. Collective suits or applications.
- 141. Order or decree in collective suit or on collective application to specify how far it affects each tenant.
- 142. Suit by co-sharer landlord for rent
- 143. Institution of suits by presentation of statement of claim.
- 144. Additional particulars required in statement of claim in certain suits and in certain applications
- 145. Substitution of copies or extracts for original documents admitted in evidence.
- 146. Statement of claim by whom to be presented
- 147. Signature and verification of statement of claim.
- 148. Production of documents by plaintiff.
- 149. Production of documents by defendant.
- 150. Return or amendment of statement of claim.
- 151. Issue of summons to defendant.
- 152. Attendance of defendant personally or by agent.
- 153. Production of documents and witnesses.
- 154. Deposit of cost of serving summons.

SECTION.

156. Procedure when only the defendant appears.
157. Procedure when only the plaintiff appears.
158. Production of documents by defendant.
159. Hearing of defendant on day to which case is postponed.
160. Exemption of women from personal attendance.
161. Employment of agents.
162. Power to grant time or adjourn hearing.
163. Examination and cross-examination of parties of their agents and of witnesses; written statement by defendant.
164. Conduct and record of examination.
165. Power to direct attendance of party whose agent cannot answer material question.
166. Decree when to be made.
167. Power to postpone trial to take further evidence.
168. Production of witnesses.
169. Procedure when neither party appears on day fixed for final hearing of suit.
170. Judgment.
171. Local inquiries.
172. Payment into Court by defendant, after tender to plaintiff.
173. Payment into Court by defendant, without prior tender to plaintiff.
174. Prohibition of interest on sums paid into Court.
175. Power to award damages to plaintiff in rent-suit.
176. Power to award compensation to defendant in rent-suit.
177. Procedure where third party claims right to receive rent.
178. Suit for ejectment of non-occupancy raiyat, or cancelment of lease of any tenant, for arrears of rent.
179. Power of Deputy Commissioner to grant lease to raiyat in default of landlord.
180. Procedure where tenant fails to deliver counterpart engagement to landlord.

Execution of Decrees and Orders of the Deputy Commissioner.

181. Limitation of time for application for execution.
182. Decrees and orders by what Court to be executed.
183. Form of application for execution.
184. Issue of process of execution.
185. Form of warrant of execution against person or movable property.
186. Exemptions from attachment and sale.
187. Indication of movable property to be seized.
188. Duration of warrant of execution.
189. Second and successive warrants of execution.
190. Notice when to be given before issue of warrant of execution.
191. Procedure when judgment-debtor is arrested.
192. Further proceedings after discharge from jail.
193. Diet-money for subsistence of prisoners.
194. Execution of decree or order for ejectment or re-instatement of cultivator.
195. Execution of decree or order for cancelment of lease, for ejectment, or for re-instatement of tenant not being an actual cultivator.
196. Execution of decree for rent given in favour of sharer in undivided estate or tenure.
197. Execution of rent decree obtained by a co-sharer landlord.
198. Execution against immovable property in certain cases, if judgment not satisfied.

Sales in Execution of Decree of the Deputy Commissioner.

199. Notification of intended sale of movable property and custody of property.
200. Interval between seizure and sale.
201. Place and manner of sale.
202. Prohibition of purchase by officers.
203. Postponement of sale if fair price be not offered.
204. Payment of purchase-money, and delivery of property to purchaser.
205. Application of proceeds of sale.
206. Procedure where third party claims interest in property seized.
207. Irregularities not to vitiate sale.
208. Sale of tenure or holding in execution of decree for arrears of rent.
209. Disposal of proceeds of sale under section 208.
210. Sale of other property in execution of decree for arrears of rent of tenure or holding.

SECTION.

- 211. Procedure where third party claims to be in lawful possession of tenure or holding.
- 212. Application to set aside sale of immovable property, on deposit of debt and compensation to purchaser.
- 213. Application to set aside sale of immovable property on ground of irregularity.
- 214. Grounds on which suit or application to set aside sale may be brought.

Appeals.

- 215. Appeal from orders of Deputy Commissioners.
- 216. Limitation of appeals from such orders.
- 217. Bar to further appeals, with proviso for revision by Board or Commissioner.
- 218. Appeal in certain suits.
- 219. Appeal to Deputy Commissioner when to be presented.
- 220. Appeal when to be heard.
- 221. Re-admission of appeal.
- 222. Re-hearing of appeal on application of respondent against whom *ex-parte* decree passed.
- 223. Judgment in appeal.
- 224. Appeal to Judicial Commissioner or High Court.
- 225. Hearing of appeals by Judicial Commissioner instead of by Deputy Commissioner.
- 226. Commissioner or High Court.
- 227. Order passed *ex-parte* by default.
- 228. but rejection of application to set aside appeal-able.
- 229. Application of section 561 of the Code of Civil Procedure.

CHAPTER XVII.

LIMITATION.

- 230. Application of the Indian Limitation Act, 1877.
- 231. General rule of limitation.
- 232. Limitation of suits and applications for grant of leases, etc.
- 233. Limitation of certain suits for ejectment.
- 234. Limitation of suits and applications for arrears of rent.
- 235. Successive suits or applications for recovery of rent.
- 236. Limitation of suits against agents for money, accounts or papers.
- 237. Limitation of applications for recovery of possession of holding.
- 238. Limitation of suits or applications by village headmen for recovery of possession.

CHAPTER XVIII.

SPECIAL PROVISIONS WITH RESPECT TO MUNDARI KHUNT-KATTIDARS.

- 239. Application of preceding sections to Mundari khunt-kattidari tenancies.
- 240. Restrictions on transfer of Mundari khunt-kattidari tenancies.
- 241. Transfer for certain purposes.
- 242. Ejectment of persons unlawfully obtaining possession of such tenancies.
- 243. Enhancement of rent.
- 244. Recovery of arrears of rent under the certificate procedure, where there is a record-of-rights.
- 245. Reference of question of title to Civil Court.
- 246. Recovery of arrear of rent by suit where there is no record-of-rights.
- 247. Joinder of parties in proceedings under section 244 or 246.
- 248. Recovery of money due to the Government or rent due to a landlord.
- 249. Recovery of contributions from co-sharer tenants.
- 250. Entry of Mundari khunt-kattidari tenancies in record-of-rights.
- 251. Bar to suits under section 87.
- 252. Decision of disputes regarding entries or omissions in record-of-rights.
- 253. Appeal against such decisions.
- 254. Entry of decision in record-of-rights.

246 *The Chota Nagpur Tenancy Act, 1908.* [Ben. Act 6 of 1908.]

SECTION.

255. In preparing record-of-rights, judgments, etc., in suits not to be taken as evidence that tenancies are or are not Mundari khunt-kattidari tenancies.
256. Record-of-rights to be conclusive evidence on the question whether a tenancy is a Mundari khunt-kattidari tenancy.

CHAPTER XIX.

SUPPLEMENTAL PROVISIONS.

Joint-landlords.

257. Joint-landlords.

Bar to Suits.

258. Bar to suits in certain cases.

Process.

259. Mode of service.
260. Authentication and payment of costs.

Costs.

261. Costs in suits and applications.
262. Deposit of costs of proceedings to be incurred by the Government.

Production of Witnesses and Documents.

263. Production of witnesses and documents.

Rules and Notifications.

264. Power to make rules to carry out objects of Act.
265. Power to make rules as to procedure, and application of the Code of Civil Procedure.
266. Publication of rules in draft.
267. Publication and effect of rules and notifications.

Recovery of Dues.

268. Recovery of dues.

Powers.

269. Transfer of cases from one Revenue-officer to another.
270. Control over Deputy Commissioners and Deputy Collectors.

Saving of Special Enactments.

271. Saving of special enactments.

SCHEDULE A—Acts and Notification repealed in the Chota Nagpur Division, except the District of Manbhum.

SCHEDULE B—Acts prospectively repealed in the District of Manbhum.

BENGAL ACT 6 OF 1908.

(THE CHOTA NAGPUR TENANCY ACT, 1908.)^[1]

(11th November, 1908.)

An Act to amend and consolidate certain enactments relating to the law of Landlord and Tenant and the settlement of rents in Chota Nagpur.

Whereas it is expedient to amend and consolidate certain enactments relating to the law of landlord and tenant and the settlement of rents in Chota Nagpur;

And whereas the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892,^[2] to the passing of this Act;

It is hereby enacted as follows:

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Chota Nagpur Tenancy Act, 1908; Short title and extent.

Ben. Act
III of 1884.

(2) It extends to the Chota Nagpur Division, except the district of Manbhum and except any area or part of an area which is constituted a municipality under the Bengal Municipal Act, 1884,^[3] and which is specified in this behalf by notification issued by the Local Government; and

(3) The Local Government may, by notification, extend the whole or any portion of this Act to the said district of Manbhum or to any part thereof.^[4]

2. (1) The Acts and notification specified in Schedule A are hereby repealed in the Chota Nagpur Division, except the district of Manbhum. Repeal

^[1]LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1908, Pt. IV, pp. 99-114; for Report of the Select Committee, see *ibid*, 1908, Pt. IV, Extraordinary, pp. 3-7; for Proceedings in Council, see *ibid*, 1908, Pt. IVA, pp. 207-214 and 252-268.

LOCAL EXTENT.—See section 1 (2) above.

^[2]Printed in the Collection of Statutes relating to India, 1913, Vol. II, p. 804.

^[3]Printed in Vol. II of this Code.

^[4]For notification extending this Act, excepting certain sections to the district of Manbhum, see the Bihar and Orissa Statutory Rules and Orders, 1918, Vol. I, Pt. VI.

(Sec. 3.)

(2) When this Act is extended to the district of Maubhum or any part thereof, the Acts specified in Schedule B shall be deemed to be repealed in that district or part, as the case may be; or, if only a portion of this Act is so extended, then so much of the said Acts as is inconsistent with that portion shall be deemed to be so repealed.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

- (i) “agricultural year” means the year prevailing in a local area for agricultural purposes, and such year shall be deemed to commence and terminate on such dates, respectively, as the Local Government may, by notification, direct;
- (ii) “Bhugut bandha mortgage” means a transfer of the interest of a tenant in his tenancy.
for the purpose of securing the payment of money advanced or to be advanced by way of loan,
upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the tenancy during the period of the mortgage;
- (iii) “Board” means the Board of Revenue for Bengal;
- (iv) “Certificate Officer” means the Certificate Officer as defined in clause (2) of section 4 of the Public Demands Recovery Act, 1895;
- (v) “civil jail” means the civil jail of the district, and includes any place appointed by the Local Government for the confinement of prisoners under this Act;
- (vi) “Commissioner” and “Judicial Commissioner” mean respectively the Commissioner and Judicial Commissioner of Chota Nagpur; and include any other person specially empowered by the Local Government to discharge the functions of the Commissioner or Judicial Commissioner, as the case may be, in any particular area;
- (vii) “Deputy Collector” includes an Assistant Collector and any Sub-Deputy Collector who is specially empowered by the Local Government to discharge any of the functions of a Deputy Collector under this Act;
- (viii) “Deputy Commissioner,” in any provision of this Act, includes—

(a) any Revenue-officer or Deputy Collector who is specially empowered by the Local Government to

Ben. Act
I of 1898.

(Sec. 3.)

discharge any of the functions of a Deputy Commissioner under that provision; and

(b) any Deputy Collector to whom the Deputy Commissioner may, by general or special order, transfer any of his functions under that provision;

(ix) "enhancement" and "enhanced" do not include an increase of rent in respect of land held by a raiyat in excess of the area for which rent has previously been paid by him, or in respect of the conversion of upland, whether within or without his holding, into korkar; but include any commutation of rent payable in money into rent payable wholly or partly in kind;

(x) "estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Deputy Commissioner, and includes Government khas mahals and revenue-free lands not entered in any register;

(xi) "forest-produce" includes the following, whether taken from a forest or not, that is to say:—

(a) wood, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers and myrabolams,

(b) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned of trees,

(c) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(d) wild animals, and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

(e) peat, surface-soil, rock and minerals (including iron-stone, coal, clay, sand and limestone, when taken by any person for his own use);

(xii) "holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy;

(xiii) "korkar" means land, by whatever name locally known, such as bahbala, khandwat, jalsasan or ariat, which has

(Sec. 3.)

been artificially levelled or embanked primarily for the cultivation of rice, and—

- (a) which previously was jungle, waste or uncultivated, or was cultivated upland, or which, though previously cultivated, has become unfit for the cultivation of transplanted rice, and
- (b) which has been prepared for cultivation by a cultivator (other than the landlord), or by his predecessor in interest (other than the landlord), with or without the consent of the landlord according as such consent is required or not by section 64;
- (xiv) "landlord" means a person immediately under whom a tenant holds, and includes the Government;
- (xv) "movable property" includes standing crops;
- (xvi) "Mundari khunt-kattidari tenancy" means the interest of a Mundari khunt-kattidar;
- (xvii) "pay," "payable" and "payment," when used with reference to rent, include "deliver," "deliverable" and "delivery;"
- (xviii) "permanent tenure" means a tenure which is heritable and which is not held for a limited time;
- (xix) "prædial conditions" mean conditions or services appurtenant to the occupation of land, other than the rent; and include rakumats payable by tenants to landlords, and every mahtut, mangan and madad, and every other similar demand, howsoever denominated, and whether regularly recurrent or intermittent;
- (xx) "prescribed" means prescribed by the Local Government by rule made under this Act;
- (xxi) "proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate;
- (xxii) "registered" means registered under any Act for the time being in force for the registration of documents;
- (xxiii) "rent" means whatever is lawfully payable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant, and includes all dues (other than personal services) which are recoverable under any enactment for the time being in force as if they were rent;

(Sec. 4.)

(xxiv) "resumable tenure" means a tenure which is held subject to the condition that it shall lapse to the estate of the grantor and be resumable by him or his successor in title—

(a) on failure of male heirs of the body of the original grantee in the male line, or

(b) on the happening of any definite contingency other than that referred to in sub-clause (a) of this clause;

(xxv) "Revenue-officer," in any provision of this Act, means any officer whom the Local Government may appoint to discharge any of the functions of a Revenue-officer under that provision;

(xxvi) "tenant" means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person;

(xxvii) "tenure" means the interest of a tenure-holder, and includes an under-tenure, but does not include a Mundari khunt-kattidari tenancy; and

(xxviii) "village" means,—

(a) in any local area in which a survey has been made and a record-of-rights prepared under any enactment for the time being in force, the area included within the same exterior boundary in the village map finally adopted in making such survey and record as subsequently modified by the decision (if any) of a Court of competent jurisdiction, and

(b) where a survey has not been made and a record-of-rights has not been prepared under any such enactment, such area as the Deputy Commissioner may, with the sanction of the Commissioner, by general or special order, declare to constitute a village.

CHAPTER II.

CLASSES OF TENANTS.

4. There shall be, for the purposes of this Act, the following classes of tenants, namely:—

(1) tenure-holders, including under-tenure-holders,

Classes of
tenants

(Secs. 5-7.)

(2) raiyats, namely:—

- (a) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them,
- (b) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy, and
- (c) raiyats having khunt-katti rights;

(3) under-raiyats, that is to say, tenants holding, whether immediately or mediately, under raiyats, and

(4) Mundari khunt-kattidars.

Meaning of
“tenure-holder.”

5. “Tenure-holder” means primarily a person who has acquired from the proprietor, or from another tenure-holder, a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it; and includes—

- (a) the successors in interest of persons who have acquired such a right, and
- (b) the holders of tenures entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869; [1] of 1869.

but does not include a Mundari khunt-kattidar.

Meaning of
“raiyyat.”

6. (1) “Raiyyat” means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners; and includes the successors in interest of persons who have acquired such a right, but does not include a Mundari khunt-kattidar.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(2) A person shall not be deemed to be a raiyyat unless he holds land either immediately under a proprietor, or immediately under a tenure-holder or immediately under a Mundari khunt-kattidar.

(3) In determining whether a tenant is a tenure-holder or a raiyyat, the Court shall have regard to—

- (a) local custom, and
- (b) the purpose for which the right of tenancy was originally acquired.

Meaning of
“raiyyat
having
khunt-katti
rights.”

7. (1) “Raiyyat having khunt-katti rights” means a raiyyat in occupation of, or having any subsisting title to, land reclaimed from jungle

(Secs. 8-11.)

by the original founders of the village or their descendants in the male line, when such raiyat is a member of the family which founded the village or a descendant in the male line of any member of such family :

Provided that no raiyat shall be deemed to have khunt-katti-rights in any land unless he and all his predecessors in title have held such land or obtained a title thereto by virtue of inheritance from the original founders of the village.

(2) Nothing in this Act shall prejudicially affect the rights of any person who has lawfully acquired a title to a khunt-kattidari tenancy before the commencement of this Act.

8. "Mundari khunt-kattidar" means a Mundari who has acquired "Mundari a right to hold jungle land for the purpose of bringing suitable portions thereof under cultivation by himself or by male members of his family, and includes—

(a) the heirs male in the male line of any such Mundari, when they are in possession of such land or have any subsisting title thereto, and

(b) as regards any portions of such land which have remained continuously in the possession of any such Mundari and his descendants in the male line, such descendants.

CHAPTER III.

TENURE-HOLDERS.

9. No tenure-holder who holds his tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the Permanent Settlement shall be liable to any enhancement of such rent, anything in the Bengal Decennial Settlement Regulation, VIII of 1793, [1] section 51, or in any other law, to the contrary notwithstanding.

10. No bhuinhar whose lands are entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869, [2] shall be liable to any enhancement of the rent of his tenure.

11. (1) When any tenure or portion thereof is transferred by succession, inheritance, sale, gift or exchange, the transferee or his successor in title shall cause the transfer to be registered in the office of the landlord to whom the rent of the tenure or portion is payable.

[1] Printed in Vol. I of this Code.

[2] Printed in Vol. II of this Code.

(Secs. 12-14.)

(2) The landlord shall, in the absence of sufficient reason to the contrary, allow the registration of all such transfers.

(3) Whenever any such transfer is registered in the office of the landlord, he shall be entitled to levy a registration-fee of the following amount, namely:—

(a) when rent is payable in respect of the tenure or portion—a fee of two *per centum* on the annual rent thereof: provided that no such fee shall be less than one rupee or more than one hundred rupees, and

(b) when rent is not payable in respect of the tenure or portion—a fee of two rupees.

(4) If an application for the registration of any transfer of a tenure or portion thereof under sub-section (1) is not made within a period of one year from the date of the transfer, and if the registration fee authorized by sub-section (3) is not paid or tendered within that period, the transferee or his successor in title shall not be entitled to recover, at any time after the expiry of the said period, by suit or other proceeding, any rent which may have become due to him, as the owner of such tenure or portion, between the date of the transfer and the date of the application for registration.

(5) Nothing in this section shall—

(i) validate a transfer of any tenure or portion thereof which, by the terms upon which it is held, or by any law or local custom, is not transferable, or

(ii) affect the right of the landlord to resume a resumable tenure.

Procedure
on refusal of
landlord to
allow registra-
tion of trans-
fer of tenure.

12. If any landlord refuses to allow the registration of any such transfer as is mentioned in section 11, the transferee or his successor in title may make application to the Deputy Commissioner; and the Deputy Commissioner shall thereupon, after causing notice to be served on the landlord, make such inquiry as he considers necessary; and, if no sufficient grounds are shown for the refusal, shall pass an order declaring that the transfer shall be deemed to be registered.

Division of
share or
distribution of
land.

13. Notwithstanding anything contained in section 11 or section 12, a division of any tenure or portion thereof, or a distribution of the rent payable in respect of any tenure or portion thereof, shall not be binding on the landlord unless it is made with the express consent in writing of the landlord or of his agent if specially authorized in that behalf.

Annulment of
incumbrances

14. (1) Upon the resumption of a resumable tenure, every lien, sub-tenancy, easement or other right or interest created, without the con-

(Secs. 15-17.)

sent or permission of the grantor or his successor in interest, by the grantee or any of his successors, on the tenure, or in limitation of his own interest therein, shall be deemed to be annulled, except the following, namely:—

- (a) any lease of land whereupon a dwelling-house, manufactory or other permanent building has been erected or a permanent garden, plantation, tank, canal, place of worship or burning or burying ground has been made, or wherein a mine has been sunk under lawful authority;
- (b) any right of a raiyat or cultivator in his holding or land, as conferred by this Act or by any local custom or usage;
- (c) any right to hold land occupied by a sacred grove;
- (d) any Mundari khunt-kattidari tenancy; and
- (e) any right of a headman of a village or group of villages (whether known as a manki or pradhan or manjhi or otherwise) in his office or land.

(2) Nothing in clause (a) of sub-section (1) shall confer on any grantee of a resumable tenure, or any of his successors, any right over minerals which he does not otherwise possess.

15. The mere registration of a transfer under section 11, or the mere receipt of a registration-fee thereunder, or the passing of an order by the Deputy Commissioner under section 12, shall not be deemed to imply a consent to, or permission to make the transfer, within the meaning of section 14; and the landlord shall not be bound by the terms or conditions of any such transfer.

Saving of rights of landlord.

CHAPTER IV.

OCCUPANCY-RAIYATS.

General.

16. Every raiyat who, immediately before the commencement of this Act, has, by the operation of any enactment, or by local custom or usage or otherwise, a right of occupancy in any land, shall, when this Act comes into force, have a right of occupancy in that land notwithstanding the fact that he may not have cultivated or held the land for a period of twelve years.

Continuance of existing occupancy rights.

17. (1) Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has

Definition of "settled raiyat."

(Sec. 18.)

continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

(2) A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(4) Land held by two or more co-sharers as a raiyati holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(5) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for three years thereafter.

(6) If a raiyat recovers possession of land under section 71 or by suit, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than three years.

(7) If, in any suit or proceeding, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed, for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

Bhuinhars and Mundari khunt-kattidars to be settled raiyat in certain cases.

18. The following classes of persons shall be deemed to be settled raiyats for the purposes of this Act, in regard to the land in their villages which they cultivate as raiyats (other than their own bhuinhari or Mundari khunt-kattidari land, and other than landlords' privileged lands as defined in section 118), and the provisions of sub-sections (3) to (6) of section 17 shall apply to such persons as if they were raiyats, namely:—

(a) where any land in a village, other than land known as manjhihas or ketbkheta, is entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869,^[1] all members of any Bhuinhari family who hold, and have for twelve years continuously held, land in such village, and

Ben. Act. 1869.

(b) where any village contains land not forming part of a Mundari khunt-kattidari tenancy, and an entry of Mundari khunt-kattidari tenancies or of Mundari khunt-kattidars

(Secs. 19-20.)

in such village has been made in any record-of-rights as finally published under this Act or under any law in force before the commencement of this Act—all male members of any Mundari khunt-kattidari family who hold, and have for twelve years continuously held, land in such village.

19. Every person who is a settled raiyat of a village within the meaning of section 17 or section 18 shall have a right of occupancy in all land (other than landlords' privileged lands as defined in section 118) for the time being held by him as a raiyat in that village. Settled raiyats to have occupancy rights.

20. (1) When the immediate landlord of an occupancy holding is a proprietor or a permanent tenure-holder, and the entire interest of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, such person shall not retain a right of occupancy in the holding, but shall hold the same as a proprietor or permanent tenure-holder, as the case may be; but nothing in this sub-section shall prejudicially affect the rights of any third person. Effect of acquisition of occupancy-right by landlord.

(2) If an occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, he shall be entitled to hold the land subject to the payment to his co-proprietors or joint permanent tenure-holders of the shares of the rent which may be from time to time payable to them; and, if such transferee sub-lets the land to a third person, such third person shall be deemed to be a tenure-holder or a raiyat, as the case may be, in respect of the land.

Illustration—A, a co-sharer landlord, purchases the occupancy holding of a raiyat, X. A is entitled himself to hold the land on payment to his co-sharers of the shares of the rent payable to them in respect of the holding. A sub-lets the land to Y, who takes it for the purpose of establishing tenants on it; Y, becomes a tenure-holder in respect of the land. Or A sublets it to Z, who takes it for the purpose of cultivating it himself; Z becomes a raiyat in respect of the land.

(3) A person interested in any estate, tenure, village or land, whether solely or jointly with others, as a temporary tenure-holder, ijaradar or farmer of rents or as a mortgagee in possession, shall not, during the period of his lease or mortgage, acquire by purchase or otherwise a right of occupancy in any land comprised in his lease or mortgage:

Provided that nothing in this sub-section shall prohibit the acquisition of occupancy-rights by any village-headman (whether known as pradhan or manjhi or otherwise) who by local custom or usage has a right to acquire the same.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in ijara or farm.

(Secs. 21-26.)

Incidents of occupancy-right.

Rights of
occupancy-
raiyat in re-
spect of use
of land.

21. When a raiyat has a right of occupancy in respect of any land, he may use the land—

(a) in any manner which is authorized by local custom or usage, or

(b) irrespective of any local custom or usage, in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy.

Protection
of occupancy-
raiyat from
eviction
except on
specified
grounds.

22. An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(a) that he has used the land comprised in his holding in a manner which is not authorized by section 21, or

(b) that he has broken a condition, consistent with the provisions of this Act, on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

Devolution
of occupancy-
right on
death.

23. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any local custom to the contrary, descend in the same manner as other immovable property:

Provided that in any case in which, under the law of inheritance to which the raiyat is subject, his other property goes to the Crown, his right of occupancy shall be extinguished.

Obligation
of occupancy-
raiyat to pay
rent.

24. An occupancy-raiyat shall pay rent for his holding at a fair and equitable rate.

Enhancement of Rent.

Presumption
that rent of
occupancy-
raiyat is fair
and equitable.

25. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

Confirmation
of rents
enhanced
prior to
commence-
ment of this
Act.

26. When the rent of an occupancy-raiyat whose rent is liable to enhancement has been enhanced before the commencement of this Act, otherwise than under section 24 of the Chota Nagpur Landlord and Ten- Ben. Act 1 of
ant Procedure Act, 1879, [1] such enhanced rent shall be deemed to be 1879.
lawfully payable—

(a) if it has been actually paid continuously for seven years before the commencement of this Act; and

(b) if it is not proved to be unfair and inequitable:

(Secs. 27-28.)

Provided that, where the rent lawfully payable by an occupancy-raiyat for his holding has been made an issue in any suit for arrears of rent, and the Court has arrived at a finding on that issue, the rent so found shall be deemed to be lawfully payable by the raiyat for the holding.

27. (1) From and after the commencement of this Act,—

Methods in which rent of occupancy-raiyat may be enhanced.

(a) in any area for which a record-of-rights has not been prepared and finally published under this Act or under any law in force before the commencement of this Act, or for which an order has not been issued under this Act or under any law in force before the commencement of this Act for the preparation of such a record, the money-rent of an occupancy-raiyat whose rent is liable to enhancement may be enhanced only by order of the Deputy Commissioner passed under section 29; and

(b) in any area for which a record-of-rights has been prepared and finally published as aforesaid, or for which an order has been issued as aforesaid for the preparation of such a record, the money-rent of an occupancy-raiyat whose rent is liable to enhancement may be enhanced only,—

(i) in cases referred to in section 62, section 94 or section 99, by order of the Deputy Commissioner passed under section 29, and

(ii) in other cases, by order of a Revenue-officer passed under Chapter XII.

(2) No enhancement of such rent made after the commencement of this Act in any manner other than that referred to in clause (a) or clause (b), as the case may be, whether by private contract or otherwise, shall for any reason be recognized or given effect to in any suit or proceeding in any Court.

28. (1) Every application to the Deputy Commissioner for the enhancement of the rent of an occupancy holding shall specify—

Contents of application to Deputy Commissioner for enhancement.

(a) such particulars as may be prescribed regarding the area, situation, local names, quality and boundaries of the parcels of land constituting the holding;

(b) the rates of rent (if any) payable by the raiyat for the different classes of land constituting the holding and the yearly rent payable for the holding at the date of the application;

(Sec. 29.)

- (c) the rates (if any) generally prevailing in the village for corresponding classes of land;
- (d) the date (as nearly as it can be ascertained) when the rates of rent generally prevailing were last adjusted in the village;
- (e) the rates which the applicant desires to claim; and
- (f) the grounds on which the applicant considers that he is entitled to the enhancement claimed.

(2) Sections 146 to 149 shall apply to every application made under this section.

Procedure
on receipt
of such
application.

29. (1) When any such application has been received, the Deputy Commissioner—

- (a) shall forthwith give notice of the contents thereof to the raiyat, and
- (b) may, if he thinks fit, order a measurement of the land, and
- (c) may, upon consideration of all the circumstances set forth in the application, and after hearing any objection advanced by the raiyat, by order, fix such enhanced rent, or otherwise vary the rent for the said land, as to him may seem fair and reasonable:

Provided that no enhancement shall be ordered except on one or more of the following grounds, namely,—

- (i) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of similar quality and with similar advantages;
- (ii) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;
- (iii) that the productive powers of the land held by the raiyat have been increased by an improvement effected during the currency of the present rent, otherwise than by the agency or at the expense of the raiyat:

Provided also that no enhancement shall be ordered which is, under the circumstances of the case, unfair or inequitable:

Provided, further, that all enhancements shall be limited in the prescribed manner (if any).

(2) The rent as fixed or varied under sub-section (1) shall be payable by the said raiyat from the commencement of the agricultural year

(Secs. 30-31.)

following the year in which the order is passed, and may be recovered in any suit instituted against him for arrears of rent.

(3) Nothing in this section shall bar the right of a raiyat to claim at any time under section 34 a reduction of the rent previously paid by him.

30. Where the Deputy Commissioner considers that the immediate enforcement of the full enhancement ordered under section 29 is likely to be attended with hardship, he may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the full enhancement has been reached. Power to direct gradual enhancement

31. (1) Where land is held by an occupancy-raiyat in excess of the area for which rent has previously been paid by him, no increase shall be made to the rent payable by him except by order of a Revenue-officer passed under Chapter XII or by order of the Deputy Commissioner passed on an application made to him by the landlord. Application for increase of rent in respect of land held in excess of the area for which rent was previously paid.

(2) Every such application shall specify—

- (a) the yearly rent payable by the raiyat at the date of the application;
- (b) the area and description of the land for which the said rent is payable;
- (c) the proceedings (if any) by which the said rent was fixed;
- (d) the general rate prevailing in the village for corresponding classes of lands;
- (e) the date (as nearly as it can be ascertained) when the said general rate was last adjusted in the village;
- (f) the area and description of the land held in excess of the area for which rent has previously been paid, and in respect of which an increase of rent is claimed; or, if the landlord is unable to indicate any particular land as being held in excess, then the area alone;
- (g) the amount of the said increase;
- (h) the manner in which the said increase has been, or should be, assessed; and
- (i) any other prescribed particulars.

(3) If a survey and record-of-rights have been made under this Act, or under any other law in force before the commencement of this Act, in respect of any land referred to in clause (b) or clause (f) of sub-section (2), the "area and description" required by those clauses, respectively, shall be specified by stating the plot number, area and class of each field included in the land, as shown by such survey and record.

(Secs. 32-33.)

(4) Sections 146 to 149 shall apply to every application made under the section.

Procedure
on receipt
of such
application.

32. (1) When any such application has been received, the Deputy Commissioner—

- (a) shall forthwith give notice of the contents thereof to the raiyat; and
- (b) shall refer to the entry (if any) relating to the tenancy in the record-of-rights prepared under this Act or any other law for the time being in force; and
- (c) may, if he thinks fit, order a measurement of the land held by the raiyat; and
- (d) may, upon consideration of all the circumstances set forth in the application, and after hearing any objection advanced by the raiyat and making such further inquiry as the Deputy Commissioner may think necessary, order such an increase, whether progressive or otherwise, as he may consider to be fair and reasonable:

Provided that, if the landlord proves that, at the time when the measurement on which the claim is based was made, there existed, in the estate or tenure or part thereof in which the holding is situate, a practice of measuring land before settling rents, the Deputy Commissioner may presume that the area of the holding as entered in any lease or counterpart engagement or (where there is an entry of area in a counterfoil receipt corresponding to the entry in the rent-roll) in the rent-roll relating to the holding was so entered after measurement:

Provided also that an increase of rent shall not be ordered where it would contravene any local custom or usage prohibiting an increase of rent in respect of the increase in area of a holding.

(2) When any increase has been so ordered, it shall be payable from the commencement of the agricultural year following that in which the order is passed, and may be recovered from the raiyat in any suit instituted against him for arrears of rent.

Savings.

33. Nothing in sections 31 and 32 shall prohibit a landlord from realizing—

- (a) increased rents from a raiyat for separate parcels of land settled with him in any manner authorized by law, or
- (b) rents on land converted from upland into korkar in accordance with local custom or usage.

(Secs. 34-35.)

Reduction of Rent.

34. (1) Any occupancy-raiyat wishing to claim a reduction of the rent previously paid by him may present an application to the Deputy Commissioner to assess the rent on the land in respect of which such reduction is sought, and (if necessary) to measure the land.

Application
to Deputy
Commissioner
for reduction
of rent.

(2) Every such application shall specify—

- (a) the yearly rent payable by the raiyat at the date of the application;
- (b) the area and description of the land for which the said rent is payable;
- (c) the proceedings (if any) by which the said rent was fixed;
- (d) the general rate prevailing in the village for corresponding classes of lands;
- (e) the date (as nearly as it can be ascertained) when the said general rate was last adjusted in the village;
- (f) the amount of reduction claimed;
- (g) the grounds on which such reduction is claimed; and
- (h) any other prescribed particulars.

(3) Sections 146 to 149 shall apply to every application made under this section.

35. (1) When any such application has been received, the Deputy Commissioner—

Procedure
on receipt of
such
application.

- (a) shall forthwith give notice of the contents thereof to the landlord; and
- (b) may, if he thinks fit, order a measurement of the land; and
- (c) may, upon consideration of all the circumstances set forth in the application, and after hearing any objection advanced by the landlord, by order, fix such reduced rent, or otherwise vary the rent for the said land, as to him may seem fair and reasonable:

Provided that no reduction shall be ordered except on one or more of the following grounds, namely,—

- (i) that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual;
- (ii) that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent;
- (iii) that the land held by the raiyat is of less area than the area for which rent has previously been paid by him.

(Secs. 36-37.)

(2) The rent as so fixed or varied shall be payable by the raiyat from the commencement of the agricultural year following the year in which the order is passed, and may be recovered in any suit instituted against him for arrears of rent.

(3) Nothing in this section shall bar the right of the landlord to claim at any time an enhancement under section 29 of the rent of such raiyat.

Bar to further enhancement or reduction of rent.

Bar to further enhancement or reduction of rent where there is no record-of-rights.

36. (1) When the rent of an occupancy holding in any area referred to in clause (a) of section 27 has been enhanced by order of the Deputy Commissioner passed under section 29, such rent shall not again be enhanced for a period of fifteen years, except—

(a) by order of the Deputy Commissioner, on the ground of a landlord's improvement; or

(b) by order of a Revenue-officer passed under Chapter XII.

(2) When the rent of an occupancy holding in any such area has been reduced by order of the Deputy Commissioner under section 34, otherwise than on the ground specified in proviso (iii) to section 35, such rent shall not again be reduced for a period of fifteen years, except—

(i) by order of the Deputy Commissioner, on one of the grounds specified in provisos (i) and (ii) to section 35, or

(ii) by order of a Revenue-officer passed under Chapter XII.

CHAPTER V.

RAIYATS HAVING KHUNT-KATTI RIGHTS.

Incidents of tenancy of raiyat having khunt-katti rights.

37. The provisions of this Act relating to occupancy-raiyats shall apply also to raiyats having khunt-katti rights:

Provided as follows:—

(a) subject to any written contract made at the time of the commencement of his tenancy, the rent payable by a raiyat having khunt-katti rights, for land in respect of which he has such rights, shall not be enhanced if his tenancy of such land was created more than twenty years before the commencement of this Act; and

(b) when an order is made for the enhancement of the rent payable, by a raiyat having khunt-katti rights, for any land

(Secs. 38-41.)

in respect of which he has such rights, the enhanced rent fixed by such order shall not exceed one-half of the rent payable by an occupancy-raiyat for land of a similar description and with similar advantages in the same village.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

38. Subject to any local custom or usage, a non-occupancy-raiyat shall, when admitted to the occupation of land, become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission, and shall be entitled to a lease only at such rates and on such conditions as may be so agreed on.

39. The provisions of section 20 shall apply in the case of the right of a non-occupancy-raiyat in his holding, in the same way that they apply to an occupancy-right.

40. The rent of a non-occupancy-raiyat shall not be enhanced, except by registered agreement or by agreement under section 42.

41. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely:—

- (a) on the ground that he has failed to pay an arrear of rent;
- (b) on the ground that he has used the land comprised in his holding in a manner which is not authorized by local custom or usage, or which materially impairs the value of the land or renders it unfit for the purposes of the tenancy;
- (c) on the ground that he has broken a condition, consistent with this Act, on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;
- (d) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;
- (e) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 42, or that the term for which he is entitled to hold at such a rent has expired.

Initial rent and lease of non-occupancy-raiyat

Effect of acquisition by landlord of the right of a non-occupancy-raiyat in his holding.

Conditions of enhancement of rent of non-occupancy-raiyat.

Grounds on which non-occupancy-raiyat may be ejected.

(Sec. 42.)

Conditions
of ejectment
on ground of
refusal to
agree to pay
fair and
equitable
rent.

42. (1) A suit for ejectment on the ground of refusal to agree to pay a fair and equitable rent shall not be instituted against a non-occupancy-raiyat, unless the landlord has tendered to the raiyat an agreement to pay the rent which he demands, and the raiyat has, within six months before the institution of the suit, refused to execute the agreement.

(2) A landlord desiring to tender an agreement to a raiyat under this section, may either—

(a) file it in the office of the Deputy Commissioner, for service on the raiyat; or

(b) send it to the raiyat direct, either by registered post or by any other means.

(3) When an agreement has been filed under clause (a) of sub-section (2), the Deputy Commissioner shall forthwith cause it to be served on the raiyat in the manner prescribed under section 264 for the service of notices.

(4) When an agreement has been served on a raiyat under sub-section (3), or when it is proved to the satisfaction of the Deputy Commissioner that an agreement has been sent to a raiyat by registered post, or, if sent to him by any other means referred to in clause (b) of sub-section (2), has duly reached him, the agreement shall, for the purposes of this section, be deemed to have been tendered.

(5) If a raiyat on whom an agreement has been served under sub-section (3), or to whom an agreement has been sent under sub-section (2), clause (b), executes it, and within one month from the date of receipt files it in the office of the Deputy Commissioner, it shall take effect from the commencement of the agricultural year next following.

(6) When an agreement has been executed and filed by a raiyat under sub-section (5), the Deputy Commissioner shall forthwith cause a notice of its being so executed and filed to be served on the landlord.

(7) If the raiyat does not execute the agreement and file it under sub-section (5), he shall be deemed, for the purposes of this section, to have refused to execute it.

(8) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Deputy Commissioner shall determine what rent is fair and equitable for the holding.

(9) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment on the second ground mentioned in clause (c) of section 41, unless he has acquired a right of occupancy.

(Secs. 43-44.)

(10) If the raiyat does not agree to pay the rent so determined, the Deputy Commissioner shall pass a decree for ejectment.

(11) In determining what rent is fair and equitable, the Deputy Commissioner shall have regard to the rents generally paid by non occupancy-raiyats for land of a similar description and with like advantages in the same village and (if the Deputy Commissioner thinks fit) in adjoining villages.

CHAPTER VII.

LANDS EXEMPTED FROM CHAPTERS IV AND VI.

43. Notwithstanding anything contained in Chapter IV, a right of Bar to acquisition of occupancy shall not be acquired in, nor shall anything contained in Chapter VI apply to,—

- (a) landlords' privileged lands referred to in clause (a) of section 118, when they are held by a tenant on a registered lease for a term of years or on a lease year by year, or
- (b) landlords' privileged lands referred to in clause (b) of section 118, or

1 of 1894. (c) land acquired under the Land Acquisition Act, 1894,[¹] for the Government or any Local Authority or Railway Company, or land belonging to the Government within a cantonment, while such land remains the property of the Government or of any Local Authority or Railway Company.

CHAPTER VIII.

LEASES AND TRANSFERS OF HOLDINGS AND TENURES.

44. Every raiyat shall be entitled to receive from his landlord a lease containing the following particulars namely:—

- (a) the quantity and boundaries of the land comprised in his holding; and, where fields have been numbered in a Government survey, the number of each field;
- (b) the amount of yearly rent payable for such land;
- (c) the instalments in which the rent is to be paid;

[¹] Printed in the General Acts, 1887-97, Ed. 1909, p. 363.

(Secs. 43-44.)

(10) If the raiyat does not agree to pay the rent so determined, the Deputy Commissioner shall pass a decree for ejectment.

(11) In determining what rent is fair and equitable, the Deputy Commissioner shall have regard to the rents generally paid by non occupancy-raiyats for land of a similar description and with like advantages in the same village and (if the Deputy Commissioner thinks fit) in adjoining villages.

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43. Notwithstanding anything contained in Chapter IV, a right of occupancy shall not be acquired in, nor shall anything contained in Chapter VI apply to,—

- (a) landlords' privileged lands referred to in clause (a) of section 118, when they are held by a tenant on a registered lease for a term of years or on a lease year by year, or
- (b) landlords' privileged lands referred to in clause (b) of section 118, or
- (c) land acquired under the Land Acquisition Act, 1894,^[1] for the Government or any Local Authority or Railway Company, or land belonging to the Government within a cantonment, while such land remains the property of the Government or of any Local Authority or Railway Company.

Bar to acquisition of right of occupancy in, and to application of Chapter VI to, landlords' privileged lands and certain other lands.

1 of 1894.

CHAPTER VIII.

LEASES AND TRANSFERS OF HOLDINGS AND TENURES.

44. Every raiyat shall be entitled to receive from his landlord a lease containing the following particulars namely:—

- (a) the quantity and boundaries of the land comprised in his holding; and, where fields have been numbered in a Government survey, the number of each field;
- (b) the amount of yearly rent payable for such land;
- (c) the instalments in which the rent is to be paid;

Raiyat entitled to a lease.

[¹] Printed in the General Acts, 1887-97, Ed. 1909, p. 363.

(Secs. 45-47.)

(d) if the rent is payable wholly or partially in kind, the proportion or quantity of produce to be delivered, and the time and manner of delivery; and

(e) any special conditions of the lease.

Landlord
entitled to
counterpart
engagement.

45. Whenever a landlord grants a lease to a tenant, or tenders to a tenant a lease such as he is entitled to receive, the landlord shall be entitled to receive from such tenant a counterpart engagement in conformity with the terms of the lease.

Restrictions
on transfer of
their rights
by raiyats.

46. (1) No transfer by a raiyat of his right in his holding or any portion thereof,—

(a) by mortgage or lease, for any period, expressed or implied, which exceeds or might in any possible event exceed five years, or

(b) by sale, gift or any other contract or agreement, shall be valid to any extent:

Provided that a raiyat may enter into a blugut bandha mortgage of his holding or any portion thereof for any period not exceeding seven years.

(2) No transfer by a raiyat of his right in his holding or any portion thereof shall be binding on the landlord, unless it is made with his consent in writing.

(3) No transfer in contravention of sub-section (1) shall be registered, or shall be in any way recognised as valid by any Court, whether in the exercise of civil, criminal or revenue jurisdiction.

(4) At any time within three years after the expiration of the period for which a raiyat has, under this section, transferred his right in his holding or any portion thereof, the Deputy Commissioner may, in his discretion, on the application of the raiyat, put the raiyat into possession of such holding or portion in the prescribed manner.

(5) Nothing in this section shall affect the validity of any transfer (not otherwise invalid) of a raiyat's right in his holding or any portion thereof made *bonâ fide* before the first day of January, 1903.

Restrictions
on sale of
rai'yats' rights
under order
of Court.

47. No decree or order shall be passed by any Court for the sale of the right of a raiyat in his holding, nor shall any such right be sold in execution of any decree or order:

Provided as follows:—

(a) any holding may be sold, in execution of a decree of a competent Court, to recover an arrear of rent which has accrued in respect of the holding;

(Secs. 48-49.)

& O. Act
of 1914.X of 1883.
II of 1884.

(b) any holding may be sold, under the procedure provided by^[1] [the Bihar and Orissa Public Demands Recovery Act, 1914] for the recovery of a loan granted for the benefit of the holding under the Land Improvement Loans Act, 1883,^[2] or the Agriculturists' Loans Act, 1884,^[2] or otherwise by the Local Government; and

(c) nothing in this section shall affect the right to execute a decree for sale of a holding passed, or the terms or conditions of any contract registered, before the first day of January, 1903.

Explanation I.—Where a holding is held under joint landlords, and a decree has been passed for the share of the rent due to one or more, but not all, of them, proviso (a) does not authorise the sale of the holding in execution of such decree.

Explanation II.—Proviso (c) does not render valid any document which is otherwise illegal or invalid, or authorise a Court to take judicial cognizance of any such document.

en. Act II
1869.

48. Where any land in a village, other than land known as manjhihas or bethkheta, is entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869,^[3] then

Restrictions
on transfer
and sale of
bhuhhari
tenures.

(a) section 46 [except sub-section (2) thereof] and section 47 shall apply also to all members of any Bhuhhari family holding land in such village, and to the land so held, as if they were raiyats and holdings, respectively, with the substitution of "the first day of October, 1908" for "the first day of January, 1903;" and

(b) if any member of any such family transfers the land so held, or any part thereof, by lease, the lessee shall not acquire a right of occupancy therein.

49. (I) Notwithstanding anything contained in sections 46, 47 and 48, any occupancy-raiyat, or any member of a Bhuhhari family who is referred to in section 48, may, without the consent of the landlord, transfer his holding or tenure or any part thereof for any reasonable and sufficient purpose having relation to the good of the holding or tenure, or of the tenure or estate in which it is comprised.

Transfer of
occupancy-
holding or
bhuhhari
tenure for
certain pur-
poses.

[¹] The words and figures "the Bihar and Orissa Public Demands Recovery Act, 1914" in s. 47 were substituted for the original words and figures "the Public Demands Recovery Act, 1895" by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 69, Sch. III, Pt. III, printed, *post*, p.

[²] Printed in the General Acts, 1873-1886, Ed. 1909, pp. 453 and 511, respectively.

[³] Printed in Vol. II of this Code.

(Sec. 50.)

(2) The expression "reasonable and sufficient purpose," as used in sub-section (1), includes—

(a) in the case of a member of a Bhuinhari family, but not in the case of an occupancy-raiyat, building purposes generally, and

(b) in any case, the use of the land for any charitable, religious or educational purpose, or for the purposes of manufacture or irrigation, or as building ground for any such purpose, or for access to land used or required for any such purpose.

(3) Every such transfer must be made by registered deed, and, before the deed is registered and the land transferred, the written consent of the Deputy Commissioner must be obtained to the terms of the deed and to the transfer.

(4) Before consenting to any such transfer, the Deputy Commissioner shall satisfy himself that the landlord is adequately compensated for the transfer, and, where only part of a holding or tenure is transferred, may, if he thinks fit, apportion between the transferee and the original tenant the rent payable for the holding or tenure.

50. (1) Notwithstanding anything contained in sections 46 and 47, the Deputy Commissioner may, on the application of the landlord of a holding,

and on being satisfied that he is desirous of acquiring the holding or any part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the tenure or estate in which it is comprised, such as the use of the land for any charitable, religious or educational purpose, or for the purpose of mining, manufacture or irrigation, or as building ground for any such purpose or for access to land used or required for any such purpose,

and after such inquiry as the Deputy Commissioner may think necessary,

authorize the acquisition thereof by the landlord upon such conditions as the Deputy Commissioner may think fit, and require the tenant to sell his interest in the holding or part to the landlord upon such terms as may be approved by the Deputy Commissioner, including full compensation to the tenant.

(2) If the landlord tenders to the tenant such sum as the Deputy Commissioner has approved under sub-section (1) as payment for any land, and the tenant refuses to receive the same, the Deputy Commissioner may, on the landlord depositing the said sum with the Deputy Commissioner, give possession of the land to the landlord in the prescribed manner.

(Secs. 51-54.)

51. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid in good faith to the landlord whose interest was so transferred, unless the transferee has before the payment served notice of the transfer on the tenant.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants, published in the prescribed manner, shall be a sufficient notice for the purposes of this section.

CHAPTER IX.

GENERAL PROVISIONS AS TO RENT.

Payment of Rent.

52. Subject to any registered agreement or local custom or usage to the contrary, a money-rent payable by a tenant shall be payable in four equal instalments falling due on the last day of each quarter of the agricultural year.

Instalments.

53. Payment of rent by a tenant to his landlord in respect of the land held or cultivated by the tenant may be made either—

Methods of payment of rent.

(a) by tendering the rent at the mal-cutcheri for the receipt of rents or other place where the rent of such land is usually payable, or

(b) by remitting the amount of the rent to the landlord or his agent by postal money-order in the prescribed form.

54. (1) Every tenant who makes a payment on account of rent, or interest due thereon, or both, to his landlord shall be entitled to obtain forthwith from the landlord or his agent, free of charge, a signed receipt for the same in the prescribed form.

Receipts for payment and interest thereon.

(2) The landlord or his agent shall prepare and retain a counterfoil, in the prescribed form, of the receipt.

(3) If any landlord or his agent, without reasonable cause, fails to grant such a receipt or to prepare and retain such a counterfoil, then, on proof thereof, the Deputy Commissioner may, in a summary proceeding, by order, impose on the landlord a fine which may extend to fifty rupees in respect of each such failure; and may, in his discretion, award to the tenant, by way of compensation, such portion of the fine as the Deputy Commissioner may think fit.

(Secs. 55-56.)

(4) If, in any suit or other proceeding under this Act or any other law, the Court or presiding officer (not being the Deputy Commissioner) finds that any landlord or agent has failed—

- (a) to deliver to a tenant a receipt in the prescribed form, or
- (b) to prepare and retain a counterfoil, in the prescribed form, of a receipt delivered to a tenant as aforesaid,

such Court or officer shall inform the Deputy Commissioner.

(5) If, in any proceeding instituted under sub-section (3), the Deputy Commissioner discharges any landlord, and is satisfied that the complaint or allegation of the tenant on which the proceedings were instituted is false or vexatious, the Deputy Commissioner may, in his discretion, by his order of discharge, direct the tenant to pay to the landlord such compensation, not exceeding fifty rupees, as the Deputy Commissioner may think fit.

Deposit of
rent in Court
of Deputy
commis-
sioner..

55. In any of the following cases, namely,—

- (a) when a tenant tenders or remits money on account of rent, and the landlord or his agent refuses to receive it or refuses to grant a receipt for it; or
- (b) when a tenant who is bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the landlord or his agent will not be willing to receive it and to grant him a receipt for it; or
- (c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or
- (d) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent,

the tenant, whether a suit has been instituted against him or not, may deposit, to the credit of the landlord, the full amount which he considers to be due from him, in the Court of the Deputy Commissioner having jurisdiction to entertain a suit or application for such rent;

and such deposit shall, as far as the tenant and all persons claiming through or under him are concerned, in all respects operate as, and have the full effect of, a payment then made by the tenant of the amount deposited to the credit of the landlord.

Procedure
on receipt of
deposit, and
payment of
same.

56. (1) On the written application of the tenant or his agent, and on his making a declaration in the prescribed form, the Deputy Commissioner shall receive such deposit and give a receipt for the sum deposited.

(Secs. 57-59.)

(2) The Deputy Commissioner shall, as soon as possible after the receipt of any money so deposited, issue a notice, in the prescribed form, to the landlord to whose credit it has been deposited.

(3) If any person claiming to be entitled to receive the money in deposit appears and applies for payment thereof to him, the Deputy Commissioner may pay the amount to him if he appears to be entitled to the same, or may, if the Deputy Commissioner thinks fit, retain the amount pending a decision by a Civil Court declaring what person is so entitled.

(4) Any sum deposited as aforesaid may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor—

(a) at the discretion of the Deputy Commissioner, and after serving notice on the landlord and giving him an opportunity to object, and for reasons to be recorded in writing,—at any time within a period of three years from the date on which the deposit was made, or

(b) upon the application of the depositor—at any time after the expiration of the said period.

57. Whenever any deposit has been received by the Deputy Commissioner no suit shall be maintained, and no application for a certificate under section 244 shall be entertained, against the person making the deposit, or his representatives, on account of any rent which accrued due prior to the date of the deposit, unless such suit be instituted or such application be made within six months from the date of the service of the notice issued under section 56 in respect of such deposit.

Limitation of suit or application for rent due prior to deposit.

Arrears of Rent.

58. (1) Any instalment of rent which is not paid before sunset on the day when the same is payable shall be deemed an arrear of rent, and shall be liable to simple interest not exceeding twelve-and-a-half *per centum per annum*:

What to be deemed arrear of rent; interest on arrears

Provided that, where a tenant pays his rent in full within the agricultural year in which it accrues due, interest shall not exceed six-and-a-quarter *per centum* on the yearly rent lawfully payable.

(2) Sub-section (1) shall not apply to dues which are recoverable under the Cess Act, 1880, as if they were rent.

Ben. Act IX of 1880.

59. When an arrear of rent is adjudged to be due from a tenure-holder not having a permanent or transferable interest in the land, the lease of such tenure-holder shall be liable to be cancelled and the tenure-holder shall be liable to ejectment:

Ejectment of tenure-holder and cancellation of lease for arrears.

(Secs. 60-61.)

Provided that no such cancellation or ejectment shall be made otherwise than in execution of a decree or order made under this Act.

Arrear of
rent to be
first charge
on tenancy.

60. The rent of a tenancy shall be a first charge on the tenancy:

Provided that, if a tenancy is sold in execution of a decree for arrears of rent, the purchaser shall acquire the tenancy free of all liability for rent for any period prior to the date of the sale, and rent due for any such period shall be a first charge on the sale-proceeds of the tenancy.

Commutation of Rent payable in Kind.

Commutation
of rent
Payable in
Kind.

61. (1) When any tenure-holder or occupancy-raiyat pays for a tenure or holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, or partly in any of those ways and partly in money, then the rent so payable shall not be altered, whether by private contract or otherwise, except on the application of either the tenant or his landlord to have the rent commuted to a money-rent.

(2) Such application may be made to the Deputy Commissioner or a Revenue-officer.

(3) When any such application is made, the Deputy Commissioner or Revenue-officer may, after such inquiry as he thinks fit to make, determine the sum to be paid as money-rent, and may order that the tenant shall, in lieu of paying his rent in kind or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination, the said officer shall have regard to—

- (a) the average money-rent payable by tenants for land of a similar description and with similar advantages in the vicinity;
- (b) the average net value of the rent actually received by the landlord during the preceding ten years, or during any shorter period for which evidence may be available;
- (c) the special circumstances (if any) which gave rise to the assessment of the rent payable by the tenant at the date of the application;
- (d) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges; and
- (e) improvements effected by the landlord or the tenant in respect of the holding;

and shall proceed in the prescribed manner.

(Secs. 62-63.)

(5) The order shall be in writing, and shall state the grounds on which it is made and the time from which it is to take effect.

(6) When any such order is made by a Deputy Commissioner, it shall be subject to appeal as provided in Chapter XVI.

(7) When any such order is made by a Revenue-officer, an appeal shall lie in the prescribed manner and to the prescribed officer.

(8) If the application is opposed, the officer shall consider whether, under all the circumstances of the case, it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

62. Where the rent of a tenure or holding has been commuted under section 61,—

Period for which commuted rents are to remain unaltered.

(1) it shall not be increased for a period of fifteen years, except—

(a) by order of the Deputy Commissioner, on the ground of a landlord's improvement or an alteration in the area of the tenure or holding, or

(b) by order of a Revenue-officer passed under Chapter XII; and

(2) it shall not be reduced for a period of fifteen years, except—

(i) by order of the Deputy Commissioner, on one of the grounds specified in provisoes (i) and (ii) to section 35, or

(ii) by order of a Revenue-officer passed under Chapter XII.

Penalties for illegal exaction of rent or prædial conditions.

63. (1) A landlord who, except under any special enactment for the time being in force, levies from a tenant any money in excess of the rent lawfully payable, with interest thereon, or enforces compliance by any tenant with any prædial condition to which he is not lawfully entitled, shall, on the application of the tenant, be liable,

Penalty on landlord levying anything in excess of rent or lawful prædial conditions.

under the order of the Deputy Commissioner, or of any officer who may be specially empowered by the Local Government in this behalf,

to pay as penalty such sum as such officer thinks fit, not exceeding two hundred rupees, or, when double the amount or value of what is so levied or enforced exceeds two hundred rupees, not exceeding double that amount or value.

(2) Such sum shall be awarded to the tenant as compensation.

(Secs. 64-65.)

CHAPTER X.

MISCELLANEOUS PROVISIONS AS TO LANDLORD AND TENANT.

Korkar.

Cases in which consent of landlord is required for conversion of land into korkar.

64. (1) The oral or written consent of the landlord for the conversion of land into korkar shall be required in every case except—

- (a) where the land was, before such conversion, included in the tenancy of a cultivator who has acquired a right of occupancy in it, or
- (b) where, by the custom or usage of the village, tenure or estate, such consent is not necessary.

(2) It shall be presumed, unless and until the contrary is proved, that the said consent is not required,—

- (i) where any land in a village, other than land known as manjhihas or bethketa, is entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869,—by a member of a Bhuinhari family, or
- (ii) where any land in a village is entered as a Mundari khunt-kattidari tenancy, or any tenant of land in a village is entered as a Mundari khunt-kattidar, in any record-of-rights finally published under this Act or under any other law in force before the commencement of this Act,—by a member of a Mundari khunt-katti family,

Ben. Act II of 1869.

who holds land in such village.

(3) Where the consent of the landlord is required by this section for the conversion of land into korkar, such consent shall be deemed to have been given if, within two years from the date on which the cultivator commenced such conversion, the landlord has not made an application to the Deputy Commissioner for the ejectment of the cultivator.

Power to eject cultivator or leave him in possession.

65. When any such application is made, the Deputy Commissioner may, after making such inquiry as he thinks fit,—

- (a) order the ejectment of the cultivator from the land so converted into korkar, upon payment by the landlord of such reasonable compensation (if any) as the Deputy Commissioner may direct, or
- (b) direct that the cultivator be left in undisturbed possession of the land.

(Secs. 66-70.)

66. Nothing in section 64 shall authorize any cultivator to convert into korkar any orchard or cultivated or homestead land in the direct possession of any other person.

Prohibition against conversion of certain land into korkar.

67. Every raiyat who cultivates or holds land which he or any member of his family has converted into korkar shall have a right of occupancy in such land, notwithstanding that he has not cultivated or held the land for a period of twelve years.

Right of occupancy in korkar.

Ejectment.

68. No tenant shall be ejected from his tenancy or any portion thereof except in execution of a decree, or in execution of an order of the Deputy Commissioner passed under this Act.

Tenant not to be ejected except in execution of decree or order.

69. (1) Every decree for the ejectment of an occupancy raiyat or a non-occupancy raiyat on the ground—

Relief against forfeitures.

(a) that he has used the land comprised in his holding in a manner which is not authorized by local custom or usage or which materially impairs the value of the land or renders it unfit for the purposes of the tenancy; or

(b) that he has broken a condition, consistent with this Act, on breach of which he is, under the terms of a contract between himself and his landlord, liable to ejectment,

shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy; and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(2) The Court may from time to time, for special reasons, extend a period fixed by it under sub-section (1).

(3) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

70. A decree or order for ejectment passed under this Act shall take effect from the end of the agricultural year in which it is passed, or at such earlier date (if any) as the Court may direct.

Decree or order for ejectment when to take effect.

(Secs. 71-73.)

Power to
replace in
possession
tenant unlaw-
fully ejected.

71. If any tenant is ejected from his tenancy or any portion thereof in contravention of section 68, he may, within a period of one year (or, if he is an occupancy-raiyat, three years) from the date of such ejection, present to the Deputy Commissioner an application praying to be replaced in possession of such tenancy or portion; and the Deputy Commissioner may, if he thinks fit, after making a summary inquiry, replace him in possession in the prescribed manner.

Surrender and Abandonment.

Surrender
of land by
raiyat.

72. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

(2) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least four months before he surrenders notice of his intention to surrender.

(3) The raiyat may, if he thinks fit, cause the notice to be served through the Court of the Deputy Commissioner within whose jurisdiction the holding or any portion of it is situate.

(4) When a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(5) Nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

Abandon-
ment of land
by raiyat.

73. (1) If a raiyat voluntarily abandons the land held or cultivated by him, without notice to the landlord, and ceases either himself or through any other person to cultivate the land and to pay his rent as it falls due, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall send a notice to the Deputy Commissioner, in the prescribed manner, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Deputy Commissioner shall cause a notice of the fact to be published in the prescribed manner.

(3) When a landlord enters under this section, the raiyat shall be entitled to apply to the Deputy Commissioner for the recovery of possession of the land at any time not later than the expiration of three years,

(Secs. 74-75.).

in the case of an occupancy-raiyat, or, in the case of a non-occupancy-raiyat, one year, from the date of the publication of the notice; and thereupon the Deputy Commissioner may, on being satisfied that the raiyat did not voluntarily abandon his holding, restore him to possession, in the prescribed manner, on such terms (if any) with respect to compensation to persons injured and payment of arrears of rent as to the Deputy Commissioner may seem just.

Continuance of Occupation.

74. When a tenure-holder, village headman or raiyat has been in occupation of a tenure or holding, and a lease is executed with a view to the continuance of such occupation, he shall not be deemed to be admitted to occupation by that lease, notwithstanding that the lease may purport to admit him to occupation.

Effect of lease purporting to admit to occupation after occupation has commenced.

Measurements.

75. (1) Every landlord of an estate, tenure or Mundari khunt-kattidari tenancy shall have a right to make a general survey or measurement of the lands comprised in such estate, tenure or tenancy, unless restrained from doing so by express engagement with the occupants of the lands.

Measurement of lands.

(2) If any landlord intending to measure any land which he has a right to measure is opposed in making such measurement by the occupant of the land,

or if any tenant, having received notice of the intended measurement of land held or cultivated by him, which is liable to such measurement, refuses to attend and point out such land, the landlord may present an application to the Deputy Commissioner.

(3) On receipt of such application the Deputy Commissioner shall, after taking such evidence and making such inquiry as he considers necessary, pass an order either allowing or disallowing the measurement, and, if the case so requires, enjoining or excusing the attendance of any tenant.

(4) If any tenant, after the issue of an order enjoining his attendance, refuses or neglects to attend, any map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

(Secs. 76-79.)

CHAPTER XI.

CUSTOM AND CONTRACT.

Saving of
custom.

76. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Illustrations.

I. A custom or usage whereby a raiyat obtains a right of occupancy as soon as he is admitted to occupation of the tenancy, whether he is a settled raiyat of the village or not, is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

II. A custom or usage by which an under-raiyat can obtain rights similar to those of an occupancy-raiyat is, similarly, not inconsistent with, and is not expressly or by necessary implication modified or abolished by the provisions of this Act, and will not be affected by this Act.

III. A custom or usage whereby a raiyat is entitled to make improvements on his tenancy and to receive compensation therefor on ejection is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

IV. A custom or usage whereby korkar is held—

(a) during preparation for cultivation, rent-free, or

(b) during or after preparation, at a rate of rent less than the rate payable for ordinary raiyati land in the same village, tenure or estate,

is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage accordingly, wherever it exists, will not be affected by this Act.

Saving as to
service tenure
and holdings.

77. Except in so far as the Local Government may otherwise direct by notification, nothing in this Act shall affect any incident of a ghatwali or other service tenure or holding.

Homesteads.

78. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

Restrictions
on exclusion
of Act by
agreement.

79. (1) Nothing in any contract between a landlord and a tenant made before or after the commencement of this Act shall—

(a) bar in perpetuity the acquisition of an occupancy-right in land, or

(b) take away an occupancy-right in existence at the date of the contract, or

(c) entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act.

(Secs. 80-81.)

(2) Nothing in any contract made between a landlord and a tenant between the 1st January, 1903, and the commencement of this Act shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land, not being landlord's privileged lands as defined in section 118.

(3) Nothing in any contract made between a landlord and a tenant after the commencement of this Act, shall—

- (i) prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land, or
- (ii) take away or limit the right of an occupancy-raiyat to use land as authorized by section 21, or
- (iii) take away the right of an occupancy-raiyat to transfer his holding or any portion thereof subject to, and in accordance with, the provisions of this Act, or
- (iv) take away the right of an occupancy-raiyat to apply for a reduction of rent under section 34, or
- (v) affect the provisions of section 58 relating to interest payable on arrears of rent, or
- (vi) take away the right of a tenant or landlord to apply for a commutation of rent under section 61, or
- (vii) take away the right of a raiyat to surrender his holding in accordance with section 72.

CHAPTER XII.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

80. (1) The Local Government may make an order directing that a survey be made and a record-of-rights be prepared, by a Revenue officer, in respect of the lands in any local area, estate, or tenure or part thereof. Power to order survey and preparation of record-of-rights.

(2) A notification in the Calcutta Gazette of an order under subsection (1) shall be conclusive evidence that the order has been duly made.

(3) The survey shall be made and the record-of-rights shall be prepared in the prescribed manner.

81. Where an order is made under section 80, the particulars to be recorded shall be specified in the order, and may include, either without Particulars to be recorded.

(Sec. 81.)

or in addition to other particulars, some or all of the following, namely:—

- (a) the name of each tenant or occupant;
- (b) the class to which each tenant belongs, that is to say, whether he is a tenure-holder, Mundari khunt-kattidar, settled raiyat, occupancy-raiyat, non-occupancy-raiyat, raiyat having khunt-katti rights, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;
- (c) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier;
- (d) the name of each tenant's landlord;
- (e) the name of each proprietor in the local area or estate;
- (f) the rent payable at the time the record-of-rights is being prepared;
- (g) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise;
- (h) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;
- (j) the rights and obligations of each tenant and landlord in respect of—
 - (i) the use by tenants of water for agricultural purposes, whether obtained from a river, jhil, tank or well or any other source of supply, and
 - (ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land;
- (k) the special conditions and incidents (if any) of the tenancy;
- (l) any easement attaching to the land for which the record-of-rights is being prepared;
- (m) if the land is claimed to be held rent-free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and, if so entitled, under what authority;
- (n) the right of any person, whether a landlord or tenant or not, to take forest-produce from jungle-land or waste-land, or to graze cattle on any land, in any village in the area to which the record-of-rights applies;

(Secs. 82-84.)

- (o) the right of any resident of the village to reclaim jungle-land or waste-land, or to convert land into korkar.

82. The Local Government may, for the purpose of settling or averting disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes, regarding the use or passage of water,

Power to order survey and preparation of record-of-rights as to water.

make an order directing that a survey be made and a record-of-rights be prepared by a Revenue-officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of—

- (a) the use by tenants of water for agricultural purposes, whether obtained from a river, jhil, tank or well or any other source of supply; and
(b) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land.

83. (1) When a draft record-of-rights has been prepared under this Chapter, the Revenue-officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication.

Preliminary publication, amendment and final publication of record-of-rights.

(2) When such objections have been considered and disposed of in the prescribed manner, the Revenue-officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(3) Separate draft or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates tenures or parts thereof.

84. (1) In any suit or other proceeding in which a record-of-rights prepared and published under this Chapter, or a duly-certified copy thereof or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published, unless such publication is expressly denied; and a certificate, signed by the Revenue-officer, or by the Deputy Commissioner of any district in which the local area, estate or tenure or part thereof to which the record-of-rights relates is wholly, or partly situate, stating that the record-of-rights has been finally published under this Chapter, shall be conclusive evidence of such publication.

Presumptions as to final publication and correctness of record-of-rights.

(Secs. 85-86.)

(2) The Local Government may, by notification, declare, with regard to any specified area, that a record-of-rights has been finally published for every village included in that area; and such notification shall be conclusive evidence of such publication.

(3) Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved, by evidence, to be incorrect.

Settlement
of fair rents.

85. (1) In every area in respect of which a survey is made and a record-of-rights is prepared under section 80, the Revenue-officer may settle fair rents in respect of any land held by a tenant.

(2) Settlements of rents may be made under sub-section (1) either—

(i) on the application of any landlord or tenant, or

(ii) without such application, if the Local Government so directs.

(3) Such settlements shall ordinarily be made after the final publication of the record-of-rights, and shall not in any case be made on the application of a landlord or tenant after such final publication unless such application be made within two months from the date of the certificate of such final publication; but may in any case be made before such publication—

(a) with the consent of the parties concerned, or

(b) if the Revenue-officer considers that that course would, in the circumstances, be advisable.

(4) Whenever a settlement of rents under this section is made after the final publication of the record-of-rights, reasonable notice shall first be given to the parties concerned; and an appeal shall lie, in the prescribed manner and to the prescribed officer, from such settlement.

(5) For the purpose of settling rents under this section, the Revenue-officer shall have regard to such rules as may be made in this behalf under section 264.

Division of
issues arising
during course
of settlement
of rents.

86. Where, in any proceedings for the settlement of rents under section 85, any of the following issues arises, namely,—

(a) whether the land is, or is not, liable to the payment of rent;

(b) whether the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;

(c) whether the relation of landlord and tenant exists;

(d) whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;

(Secs. 87-89.)

- (e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging; or
- (f) whether the special conditions and incidents of the tenancy, or any easement attaching to the land, have not or has not been recorded, or have or has been wrongly recorded,

the Revenue-officer shall try and decide such issue and settle the rent under section 85 accordingly.

87. (1) In proceedings under this Chapter, a suit may be instituted before a Revenue-officer, at any time within three months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 83, for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which he has made from, the record, whether such dispute be—

Institution of suits before Revenue-officer.

- (a) between landlord and tenant, or
- (b) between landlords of the same or of neighbouring estates, or
- (c) between tenant and tenant, or
- (d) as to whether the relationship of landlord and tenant exists, or
- (e) as to whether land held rent-free is properly so held, or
- (f) as to any other matter;

and the Revenue-officer shall hear and decide the dispute :

Provided that the Revenue-officer may, subject to such rules as may be made in this behalf under section 264, transfer any particular case or class of cases to a competent Civil Court for trial :

Provided also that, in any suit under this section, the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents under this Chapter, where such issue has been tried and decided or is already being tried, by a Revenue-officer under section 86 in proceedings instituted after the final publication of the record-of-rights.

(2) An appeal shall lie, in the prescribed manner and to the prescribed officer, from decisions passed under sub-section (1).

88. A note of all rents settled under section 85, and of all decisions under sub-section (1) and decisions on appeal under sub-section (2) of section 87, shall be made in the record-of-rights as finally published under section 83; and such note shall be considered as part of the record.

Entry in record-of-rights of rents settled and decisions made.

89. (1) Any Revenue-officer specially empowered by the Local Government in this behalf may, on application or of his own motion, within

Revision by Revenue-officer.

(Secs. 90-91.)

twelve months from the making of any order or decision under section 83, section 85 or section 86, revise the same, whether it was made by himself or by any other Revenue-officer, but not so as to affect any order passed under section 87 or any order passed in appeal under section 85, sub-section (4):

Provided that no such order or decision shall be so revised if a suit or an appeal in respect thereof is pending under section 85, sub-section (4), or section 87, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(2) An appeal shall lie, in the prescribed manner and to the prescribed officer, from any order passed under sub-section (1).

90. Any Revenue-officer specially empowered by the Local Government in this behalf may, on application or of his own motion, within twelve months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 83, correct any entry in such record-of-rights which he is satisfied has been made owing to a *bonâ fide* mistake:

Provided that no such correction shall be made if a suit or an appeal affecting such entry is pending under section 87, section 111, clause (8) or clause (10), section 252 or section 253, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

91. (1) When an order has been made under section 80, or under any law in force before the commencement of this Act directing the preparation of a record-of-rights, then, notwithstanding anything contained in the foregoing sections of this Chapter, no Deputy Commissioner or Civil Court shall, until six months after the final publication of the record-of-rights, entertain any suit or application (not being an application under the Code of Criminal Procedure, 1898),^[1]

V of 1898.

(a) in which there is an issue, either directly or indirectly, the existence or non-existence, in the area to which the record-of-rights applies, of any right referred to in clause (n) of section 81, or

(b) for the alteration of the rent or the determination of the status of any tenant in such area:

Provided that, if any person considers himself aggrieved by any act of waste or damage committed by any other person in respect of any waste land or jungle-land during the period within which suits and applications are prohibited by this section, he may apply to the Deputy

(Secs. 92-94.)

Commissioner, who may, after such inquiry as he thinks fit, by written order, prohibit the continuance of such waste or damage.

(2) The period during which the institution of a suit or the making of an application has been delayed by sub-section (1) shall be excluded in computing the period of limitation provided for such suit or application.

92. No suit shall be brought in any Court in respect of any order directing the preparation of a record-of-rights under this Chapter, or in respect of the framing, publication, signing or attestation of such a record or of any part of it.

Bar to jurisdiction of Courts in matters relating to record-of-rights.

93. (1) When a record-of-rights in respect of any land has been prepared under this Chapter, and finally published, no application or suit affecting any such land or any tenant thereof shall, within six months from the date of the certificate of final publication of such record-of-rights, be made or instituted before the Deputy Commissioner or in any Civil Court for the decision of any of the following issues, namely:—

Stay of certain proceedings before Deputy Commissioner or Civil Court when record-of-rights finally published.

- (a) whether the relation of landlord and tenant exists;
- (b) whether the land is part of a particular estate or tenancy;
- (c) whether there is any special condition or incident of the tenancy, or
- (d) whether any easement attaches to the land.

(2) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (1) has been instituted before the Deputy Commissioner or in a Civil Court, the Revenue-officer shall not entertain any suit under section 87 involving the decision of the same issue.

(3) Where the making of an application or the institution of a suit has been delayed by sub-section (1), the period of six months therein mentioned shall be excluded in computing the period of limitation provided for such suit or application.

94. (1) When the rent of an occupancy holding is entered in a record-of-rights which has been prepared and finally published under this Chapter or any law in force before the commencement of this Act, then, subject to the provisions of sections 87, 89 and 90,

Period for which rents entered in the record-of-rights are to remain unaltered.

such rent shall not, except on the ground of a landlord's improvement, be enhanced for a period of—

- (a) fifteen years after the final publication of the record-of-rights, when such publication was made after the commencement of this Act, or

(Sec. 95.)

- (b) seven years after the final publication of the record-of-rights, when such publication was made before the commencement of this Act;

and such rent shall not be reduced within the said periods, respectively, save on the ground of alteration in the area of the holding or on the ground that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other specific cause, 'sudden or gradual;

and no demand for rent in respect of an occupancy holding, in excess of the amount entered in the said record-of-rights, shall be enforceable, save as provided in this Chapter or in section 32:

Provided that, in any area in respect of which a record-of-rights has been finally published before the commencement of this Act, a Revenue-officer may, on the application of any landlord, made within two years from the commencement of this Act, assess a fair rent on lands which are included in a holding and are assessable with rent, but for which no rent has been paid or has been entered as payable in the record-of-rights.

(2) The periods of fifteen years and seven years mentioned in clauses (a) and (b) of sub-section (1) shall be counted from the date of the final publication of the record-of-rights.

Expenses of
proceedings
under this
Chapter.

95. (1) When the preparation of a record-of-rights has been directed or undertaken under this Chapter,

the expenses incurred in carrying out the provisions of this Chapter in any local area, estate, tenure or part thereof (including expenses that may be incurred at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration of boundary marks and other survey marks erected for the purpose of carrying out the provisions of this Chapter), or such part of those expenses as the Local Government may direct,

shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part, in such proportions, and in such instalments (if any), as the Local Government, having regard to all the circumstances, may determine.

(2) The cost of preparing copies of Survey maps and extracts from records-of-rights under this Chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this Chapter.

(3) The estimated amount of the expenses likely to be incurred for the maintenance, repair or restoration of boundary-marks for a period not exceeding fifteen years, or such part of such amount as the Local

(Secs. 96-98.)

Government may direct, may be recovered in advance in the same manner as if such expenses had been already incurred.

(4) The portion of the expenses referred to in the foregoing provisions of this section which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.

Explanation.—The word “tenure” in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

96. In framing a record-of-rights, and in deciding disputes, under this Chapter, the Revenue-officer shall give effect to any lawful agreement or compromise made or entered into by any landlord and his tenant:

Power of Revenue-officer to give effect to agreement or compromise.

Provided as follows:—

- (a) the Revenue-officer shall not give effect to any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act; and
- (b) where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Revenue-officer shall not give effect to such agreement or compromise unless and until he is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration—A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy-riyat. This affects the rights of the tenants of B. The Revenue-officer must, under proviso (b), inquire whether B is a tenure-holder or a riyat, within the meaning of section 5 or section 6. If he finds, on the evidence, that B is a riyat, he may give effect to the agreement. If he so finds that B is a tenure-holder, he must not give effect to the agreement.

97. When a rent is settled by a Revenue-officer under this Chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision finally fixing the rent.

Date from which settled rent takes effect.

98. (1) The Local Government may at any time, either of its own motion or on the application of any landlord or tenant, direct that any record-of-rights which has been finally published under this Act or under any law in force before the commencement of this Act, or any portion of any such record-of-rights, be revised, in the prescribed manner, but not so as to affect any rent entered therein.

Revision of record-of-rights, and new settlement of rents under orders of Local Government.

(2) At any time after the expiration of the period of—

- (a) fifteen years from the date of the certificate of the final publication of a record-of-rights, when such publication was made after the commencement of this Act, or

(Secs. 99-101.)

- (b) seven years from the date of the certificate of the final publication of a record-of-rights, when such publication was made before the commencement of this Act,

and thereafter at intervals of periods of fifteen years, the Local Government may, of its own motion or on the application of any landlord or tenant, direct—

- (i) that such record-of-rights or any portion thereof be revised in the prescribed manner, and
(ii) that a settlement of rents payable by tenants be made under section 85.

(3) The foregoing sections of this Chapter shall, subject to any rules made in this behalf under section 264, apply to every revision and settlement referred to in sub-section (1) or sub-section (2).

Enhancement of rent where application under section 98 is rejected.

99. If the Local Government rejects any application made by a landlord under section 98, sub-section (2), for a revision of a record-of-rights after the expiration of the period of fifteen years or the period of seven years, as the case may be, referred to in that sub-section, such landlord may apply to the Deputy Commissioner for the enhancement of any rent entered in such record-of-rights as being payable to him.

Validation of directions given, before the commencement of this Act, for the record of certain rights.

100. Where a direction has been given, in any order made under section 101 of the Bengal Tenancy Act, 1885,^[1] before the commencement of this Act, for the record of any rights of the kind mentioned in clause (n) of section 81 of this Act, such direction shall be deemed to be as valid as if the said clause had been enacted before such order was made.

CHAPTER XIII.

PRÆDIAL CONDITIONS, AND THE COMMUTATION AND RECORD THEREOF.

Prohibition against new prædial conditions.

101. From and after the commencement of this Act,—

- (a) no tenancy shall be created with any prædial condition attached, other than rent-free tenancies with the sole condition of rendering personal service; and
(b) no new prædial condition shall be imposed on any tenancy in existence at the time of such commencement.

(Secs. 102-105.)

102. When the original conditions of a tenancy cannot be ascertained, the tenant shall not be liable to any prædial conditions other than or in excess of those to which, by local custom or usage, he, in common with the general body of the class to which he belongs in the village, tenure or estate in which the lands of the tenancy are situated, is liable: Liability of tenant when original conditions of tenancy cannot be ascertained.

Provided that, in any case in which prædial conditions have been complied with by a tenant for a period of five years continuously, any Revenue-officer acting under this Chapter may when commuting such conditions under this Chapter, presume that the same have been complied with in accordance with local custom or usage or in accordance with an express or implied contract made at the commencement of the tenancy.

103. When, in any proceedings under this Act, it becomes necessary for a Court to calculate the value of any prædial condition, such value shall be taken to be its average value during the ten years immediately prior to the proceedings, or during any shorter period for which evidence may be available. Method of calculating present value of prædial condition.

104. When, in any suit for the recovery of rent, it is sought to recover the value of the prædial conditions appurtenant to a tenancy, an issue may be framed as to whether the value of the prædial conditions, when added to the rent payable in respect of the tenancy, exceeds a fair rent; and if it is found that the resulting amount exceeds a fair rent, the Court shall decree the rent and so much (if any) of the value of the prædial conditions as, together with the rent, will not exceed the sum which would, having regard to the special circumstances of the case, be a fair rent. Procedure in suit for rent and value of prædial conditions.

105. (1) When any land is held subject to any prædial conditions, the tenant or the landlord may apply in writing to a Revenue-officer for commutation of such conditions. Voluntary commutation of prædial conditions.

(2) The Revenue-officer shall thereupon cause a notice to be served on the landlord or the tenant, as the case may be, and shall fix a day for considering the application; and on such day, or any day thereafter to which the hearing may be adjourned, shall proceed to inquire into the matter and to determine the amount which, in his judgment, is fairly and equitably payable in commutation of such conditions.

(3) In calculating the said amount, the Revenue-officer shall have regard only to the conditions to which the tenant is liable in accordance with local custom or usage or with any contract made when the tenancy commenced, and to the money value of such conditions at the time of making such calculation, and shall follow the procedure provided in section 103:

(Secs. 106-108.)

Provided that the amount payable in commutation shall be so fixed that the total annual rent of the land, including such amount as aforesaid, shall not exceed the sum which would, having regard to the special circumstances of the case, be a fair and reasonable rent if the land were not held subject to any prædial conditions.

Power to order record of prædial conditions, with or without commutation.

106. (1) The Local Government may, in any case in which it is, in its opinion, expedient so to do, make an order directing either—

(a) that a record of all prædial conditions to which the lands within any local area or any estate, tenure or part thereof are subject shall be prepared, and a commutation of such conditions made, by a Revenue-officer; or

(b) that a record as aforesaid be made by a Revenue-officer without commutation of such conditions as aforesaid.

(2) A notification in the Calcutta Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

(3) The record of prædial conditions shall be prepared in the prescribed manner.

Preparation of record.

107. (1) Whenever an order is made under section 106, the Revenue-officer shall thereupon proceed to prepare a record containing the following particulars, namely:—

(a) the name of each tenant;

(b) the name of his landlord;

(c) the rent payable for the lands held by each tenant at the time the record is being prepared;

(d) the prædial conditions to which all or any of such lands are subject;

(e) the amount, which in the judgment of the Revenue-officer, may fairly be deemed payable in commutation of such conditions, and

(f) any other prescribed particulars.

(2) In calculating the amount payable in commutation of such conditions, the Revenue-officer shall be guided by the provisions of section 105, sub-section (3).

Publication of record.

108. (1) When the Revenue-officer has prepared a record under section 107, he shall cause a draft of the same to be locally published in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein or to any omission therefrom during the period of publication.

(Secs. 109-111.)

(2) When objections have been considered and disposed of in the prescribed manner, the record shall be finally framed and published in the prescribed manner.

(3) Separate drafts or records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.

109. An appeal shall lie, in the prescribed manner and to the prescribed officer, from any order of a Revenue-officer under this Chapter.

Appeal from orders of Revenue-officers. Revision by Commissioner or Board.

110. The Commissioner or the Board may direct the revision of any record prepared under this Chapter, or any portion of such record, at any time within two years from the date of the final publication of the record, but not so as to affect any decision from which an appeal has been preferred under section 109:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

111. In every local area, estate, tenure or part thereof, in which a survey is being made and a record-of-rights is being prepared under this Act or under any law in force before the commencement of this Act,

Procedure where a survey and record-of-rights are being made.

and in which a record of prædial conditions is being prepared and a commutation thereof is being made under an order issued under section 106,

sections 107 to 109 shall not apply, and the following provisions shall have effect, namely:—

- (1) The Revenue-officer shall, at the time of attesting the preliminary record, ascertain all the prædial conditions to which, by local custom or usage or by contract made when the tenancy commenced, each tenant is liable, and the cash values of such conditions; and shall prepare a statement, in the prescribed form, showing the conditions and values so ascertained.
- (2) In calculating the cash value of such conditions, the Revenue-officer shall be guided by the provisions of section 105, sub-section (3).
- (3) The Revenue-officer shall enter in the *khatyan* of each tenant the cash value of the prædial conditions (if any) to which such tenant is liable, as ascertained under clause (1).
- (4) If any tenant is liable, by local custom or usage or by contract made when the tenancy commenced, to any prædial

(Secs. 112-113.)

conditions other than those to which the general body of tenants are liable, or is not liable to all the prædial conditions to which the general body of tenants are liable, the Revenue-officer shall also specify in the *khatiyān* the prædial conditions to which such tenant is liable.

- (5) The statement prepared under clause (1), and the entries in the *khatiyān*, shall be published in draft in the same manner and for the same period as the record-of-rights.
- (6) Objections as to entries or omissions in the statement or *khatiyān* relating to prædial conditions may be made under the same conditions as objections to entries in or omissions from the record-of-rights, and shall be disposed of in the same manner as such objections.
- (7) After the disposal of objections, the said statement, and the entries in the *khatiyān* relating to prædial conditions, shall be finally published at the same time and in the same manner as the record-of-rights.
- (8) At any time within three months from the date of the certificate of the final publication of the record-of-rights, a suit may be instituted before a Revenue-officer, for the decision of any dispute regarding any entry in the record relating to prædial conditions or regarding any omission to enter any such conditions in the record; and the Revenue-officer shall hear and decide the dispute.
- (9) In all such suits the Revenue-officer shall, subject to any rules made in this behalf under section 264, adopt the procedure laid down in Chapter XVI for the trial of suits.
- (10) An appeal shall lie, in the prescribed manner and to the prescribed officer, from any decision of a Revenue-officer under clause (8).

Note of decisions in record-of-rights.

112. A note of all decisions under clause (8) and decisions on appeal under clause (10) of section 111, shall be made in the record-of-rights as finally published under section 83, and such note shall be considered as part of the record.

Decision of question as to whether a payment in kind is a prædial condition or a payment of rent in kind.

113. Where, in any proceeding under this Chapter or under section 61, a question arises as to whether a payment in kind is a prædial condition or a payment of rent in kind, the Revenue-officer acting under this Chapter, or the officer acting under section 61, as the case may be, shall, after such inquiry as he may consider necessary, decide whether in fact the payment is a prædial condition or not.

(Secs. 114-118.)

114. (1) When the commutation of any prædial conditions is settled under this Chapter, for any local area or estate, tenure or part thereof, the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record. Commence-
ment and
effect of com-
mutation.

(2) The amount determined by a Revenue-officer under this Chapter to be payable by a tenant in commutation of prædial conditions shall be deemed to be part of the rent payable by the tenant, and shall be recoverable accordingly.

115. When in any case the proceedings under section 105 have been completed, the Revenue-officer shall apportion the total expenses thereof between the landlord and tenant in such proportion as, having regard to all the circumstances, he may deem fit; and the amounts so apportioned shall be recoverable as an arrear of land-revenue. Expenses of
voluntary
commutation.

116. (1) The expenses incurred by the Government in carrying out in any local area or any estate, tenure or part thereof, any order made under section 106, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, estate, tenure or part, in such proportions as the Local Government, having regard to all the circumstances, may determine. Expenses of
record and
compulsory
commutation.

(2) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.

Explanation.—The word “tenure” in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

117. No proceedings under this Chapter shall bar the right of any tenant or landlord to claim a reduction or enhancement of rent under this Act after such proceedings have been completed. Saving of
right to claim
reduction or
enhancement
of rent.

CHAPTER XIV.

RECORD OF LANDLORDS' PRIVILEGED LANDS.

118. (1) The expression “landlords' privileged lands,” as used in this Chapter, means— Definition of
“landlords’
privileged
lands.”

- (a) lands which are cultivated by the landlord himself with his own stock or by his own servants or by hired labour, or are held by a tenant on lease for a term of years or year

(Secs. 119-122.)

by year, and which are, by custom, recognized as privileged land in which occupancy-rights cannot accrue, and

- (b) lands which are entered as manjhihas or bethkheta in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869.^[1] Ben. Act II 1869.

(2) From such date as the Local Government may, by notification, direct, no lease shall be considered for the purposes of clause (a) of this section unless it be in writing.

Power to direct a survey and record of landlords' privileged lands.

119. The Local Government may, by notification, direct a Revenue-officer to make a survey and record of all lands in any specified local area which are landlords' privileged lands within the meaning of clause (a) of section 118.

Application of certain sections.

120. When a notification has been published under section 119, directing the making of a record, the provisions of sections 83, 84, 87, 88, 90, 95 and 96, so far as they may be applicable, shall apply to such record as if it were a record-of-rights referred to in those sections.

Power to record landlords' privileged lands on application of landlord or tenant.

121. When any land is alleged to be a landlords' privileged land within the meaning of clause (a) of section 118, then, on the application of the landlord or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may ascertain and record whether the land is or is not landlord's privileged land within the meaning of the said clause:

Provided that, when a record of such lands has been or is being made by a Revenue-officer under section 119, no application shall be entertained under this section.

Procedure in inquiries.

122. In any inquiry under this Chapter, a Revenue-officer—

(1) shall have regard to any evidence that may be available in respect of the following among other matters, namely:—

- (a) who originally reclaimed the lands and brought them under cultivation,
- (b) whether the lands have at any time been let as landlords' privileged lands or as raiyati lands, and
- (c) whether the lands have, since their reclamation, been let year by year, or for specific periods, or for indefinite periods; and

(2) shall proceed in the prescribed manner; and

(Secs. 123-127.)

(3) shall receive in evidence any judgment, decree or order of a Civil Court or of the Deputy Commissioner, if the same be relevant;

but no such judgment, decree or order shall be conclusive proof that the lands are, or are not, landlords' privileged lands.

123. In any inquiry by a Revenue-officer under this Chapter or by any Court, as to whether lands are or are not landlords' privileged lands, the officer or Court shall presume, until the contrary is proved, that the lands are not landlords' privileged lands.

Presumption that lands are not landlords' privileged lands.

124. Where any land in any village is entered as manjhihas or bethkheta in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869, [1] a Revenue-officer acting under this Chapter shall not record any other lands in that village as being landlords' privileged lands.

No land in certain villages to be recorded as landlords' privileged lands.

125. When a record of landlords' privileged lands has been prepared under section 119 for any area, no other lands in that area shall be deemed to be landlords' privileged lands.

Exclusion of unrecorded lands from category of landlords' privileged lands.

126. An appeal shall lie, in the prescribed manner and to the prescribed officer, from decisions and orders of a Revenue-officer under this Chapter.

Appeal.

CHAPTER XV.

RECORD-OF-RIGHTS AND OBLIGATIONS OF RAIYATS HAVING KHUNT-KATTI RIGHTS, VILLAGE HEADMEN AND OTHER CLASSES OF TENANTS.

127. (1) The Local Government may make an order directing that a record be prepared by a Revenue-officer of the rights and obligations in any specified local area of—

Record-of-rights and obligations of raiyats having khunt-katti rights, village headmen, and other classes of tenants.

(a) raiyats having khunt-katti rights;

(b) headmen of villages or groups of villages, whether known as mankis or pradhans or manjhis or otherwise; or

(c) any other class of tenants;

and that a settlement of fair rents to be paid by such persons or any of them be made.

(Secs. 128-131.)

Explanation.—The word “rights,” as used in this sub-section, includes the right of a village-headman to hold his office as well as his right to hold land.

(2) A notification in the Calcutta Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

Application of
certain sec-
tions.

128. (1) When a notification has been published under section 127, directing the preparation of a record, the provisions of section 81, section 83, section 84, sub-sections (1) and (2), and sections 89 to 96, so far as they may be applicable, shall apply as if such record were referred to in those sections.

(2) When any such notification directs that a settlement of fair rents be made, the provisions of section 85, sub-sections (3), (4) and (5), section 86, section 89 and sections 95 to 97, so far as they may be applicable, shall apply to such settlement as if it were a settlement referred to in those sections.

Notice of
entries to
interested
persons.

129. At the time of the final publication of a record prepared by a Revenue-officer under this Chapter, that officer shall cause a copy of the entries therein to be served, in the prescribed manner, on all persons interested in such entries, so far as such persons can be ascertained.

Suits to
decide dispute
as to entries
in, or omis-
sions from,
record.

130. (1) Where there is a dispute regarding the correctness of any entry made in a record prepared under this Chapter, or regarding any incorrect omission therefrom, a suit may be instituted before a Revenue-officer, at any time within three months from the date of the certificate of the final publication of the record:

Provided that, in any suit under this section, the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents, where such issue has been tried and decided, or is already being tried, by a Revenue-officer acting under section 86 in proceedings instituted after the final publication of the record.

(2) In all suits under this section the Revenue-officer shall, subject to any rules made in this behalf under section 264, adopt the procedure laid down in Chapter XVI for the trial of suits before the Deputy Commissioner.

(3) An appeal shall lie, in the prescribed manner and to the prescribed officer, from the decision of the Revenue-officer in such suits.

Note of final
decisions in
record.

131. A note of all decisions under sub-section (1) of section 130, and of all decisions on appeal under sub-section (3) of that section, shall be made in the record prepared under section 127, and such note shall be considered as part of the record.

(Secs. 132-137.)

132. When a record has been finally published under section 128, or amended under section 131, the entries made therein shall be conclusive evidence of the rights and obligations of the tenants to which such entries relate, and of all the particulars recorded in such entries.

Evidential value of entries.

133. In making inquiries under this Chapter into the rights and obligations of tenants, the Revenue-officer shall have regard to the origin and nature of each tenancy and to the real status of the tenant, notwithstanding that the tenant may have been described in any document as a thikadar or temporary lease-holder or in any other similar terms.

Revenue-officer to have regard to origin and nature of tenancy and status of tenant.

134. When a record of the rights and obligations of raiyats having khunt-katti rights has been prepared under this Chapter for any local area, no lands in such area, which are not entered in such record, shall be recognized as lands in respect of which khunt-katti rights can be acquired.

Exclusion of unrecorded lands from category of khunt-katti lands.

CHAPTER XVI.

JUDICIAL PROCEDURE IN MATTERS COGNIZABLE BY THE DEPUTY COMMISSIONER.

135. The Deputy Commissioner may hold a Court, for hearing and determining suits and applications under this Act, in any place within the local limits of his jurisdiction:

Place for holding Deputy Commissioner's Court.

Provided that every hearing and decision shall be in open Court, and that the parties to the suit or application, or their agents, shall have had due notice to attend at such place.

136. Suits and applications before the Deputy Commissioner under this Act shall respectively be instituted and made—

Office for instituting suits and making applications.

(a) in the revenue-office of the district; or

(b) when the cause of action has arisen within the local limits of the jurisdiction of a Deputy Collector who is empowered to receive such suits or applications, then in the office of such Deputy Collector; or

(c) in the office of the Revenue-officer having jurisdiction to entertain the same.

137. The Deputy Commissioner may withdraw any suit from any Deputy Collector or Revenue-officer who is exercising powers of the Deputy Commissioner under this Act, and may try it himself or transfer it to any Deputy Collector.

Withdrawal of suits.

(Secs. 138-139.)

Jurisdiction where land is situated in more than one district or sub-division.

138. (1) When any suit is instituted or application made in respect of any land comprised in a tenure or holding, and such land is situated in more than one district or sub-division, the district or sub-division in which the greater part of such land is situated shall be deemed to be the district or sub-division in which the cause of action has arisen;

and, if any question be raised respecting the district or sub-division in which the greater part of the land is situated, the Board or (if the land is situated in one district) the Deputy Commissioner shall decide the question.

(2) Except as provided in sub-section (1), no Deputy Commissioner shall exercise any jurisdiction under this Act in respect of any land situated beyond the local limits of his jurisdiction, even if such land forms part of an estate the revenue of which is paid into the treasury of his district.

Certain suits and applications cognizable only by the Deputy Commissioner.

139. The following suits and applications shall be cognizable by the Deputy Commissioner, and shall be instituted and tried or heard under the provisions of this Act, and shall not be cognizable in any other Court, except as otherwise provided in this Act, namely:—

- (1) all suits for the delivery of leases or counterpart engagements;
- (2) all suits and applications for the determination of the rent payable by any tenant for agricultural land;
- (3) all suits for arrears of rent due on account of—
 - (a) agricultural land, whether subject to the payment of rent or only to the payment of dues which are recoverable as if they were rent, or
 - (b) rights of pasturage, rights to take forest-produce, rights of fishery or other similar rights;
- (4) all suits under this Act to eject any tenant of agricultural land or to cancel any lease of agricultural land;
- (5) all applications to recover the occupancy or possession of any land from which a tenant has been unlawfully ejected by the landlord or any person claiming under or through the landlord;
- (6) all suits by or against headmen of villages or groups of villages (whether known as mankis or pradhans or manjhis or otherwise) for a declaration of title in, or for possession of, their office or agricultural land, whether based or not on an allegation of the existence or non-existence of the relationship of landlord and tenant;

(Secs. 140-142.)

(7) all suits, by landlords and others in receipt of the rent of land, against any agents employed by them in the management of land or the collection of rents, or the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession; and

(8) all suits and applications in respect of which jurisdiction is conferred by this Act on the Deputy Commissioner.

140. Subject to such rules (if any) as may be made in this behalf under section 264, a suit may be instituted before, or an application may be made to, the Deputy Commissioner collectively by or against any number of tenants holding land in the same village; and an allegation that such tenants are wrongly joined shall be no ground for dismissing a suit or refusing to hear an application;

Collective
suits or
applications.

but no order shall be passed in any such collective suit or on any such collective application unless the officer making the same is satisfied that all parties have had an opportunity to appear and make objection to any claims preferred against them;

and if at any time it appears to the Deputy Commissioner that the question between any two of the parties of whom one is so joined with others cannot conveniently be jointly tried or heard, the Deputy Commissioner may order a separate trial or hearing.

141. Every order or decree passed in any case which is tried or heard jointly under section 140 shall specify the extent to which each of the tenants named in the order or decree shall be affected thereby.

Order or
decree in
collective
suit or on
collective
application to
specify how
far it affects
each tenant.

142. (1) Notwithstanding anything contained in section 257, a co-sharer landlord may institute a suit to recover from a tenant—

Suit by co-
sharer land-
lord for rent.

(a) his share of the rent, when such share is collected separately,
or

(b) the whole of the rent due to the plaintiff and his co-sharers, when all or any of his co-sharers who refuse to join in the suit are made defendants therein.

(2) When, in a suit instituted under clause (b) of sub-section (1), the plaintiff is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant or the said landlords to furnish him with correct information on these points or either of them,

(Secs. 138-139.)

Jurisdiction where land is situated in more than one district or sub-division.

138. (1) When any suit is instituted or application made in respect of any land comprised in a tenure or holding, and such land is situated in more than one district or sub-division, the district or sub-division in which the greater part of such land is situated shall be deemed to be the district or sub-division in which the cause of action has arisen;

and, if any question be raised respecting the district or sub-division in which the greater part of the land is situated, the Board or (if the land is situated in one district) the Deputy Commissioner shall decide the question.

(2) Except as provided in sub-section (1), no Deputy Commissioner shall exercise any jurisdiction under this Act in respect of any land situated beyond the local limits of his jurisdiction, even if such land forms part of an estate the revenue of which is paid into the treasury of his district.

Certain suits and applications cognizable only by the Deputy Commissioner.

139. The following suits and applications shall be cognizable by the Deputy Commissioner, and shall be instituted and tried or heard under the provisions of this Act, and shall not be cognizable in any other Court, except as otherwise provided in this Act, namely:—

- (1) all suits for the delivery of leases or counterpart engagements;
- (2) all suits and applications for the determination of the rent payable by any tenant for agricultural land;
- (3) all suits for arrears of rent due on account of—
 - (a) agricultural land, whether subject to the payment of rent or only to the payment of dues which are recoverable as if they were rent, or
 - (b) rights of pasturage, rights to take forest-produce, rights of fishery or other similar rights;
- (4) all suits under this Act to eject any tenant of agricultural land or to cancel any lease of agricultural land;
- (5) all applications to recover the occupancy or possession of any land from which a tenant has been unlawfully ejected by the landlord or any person claiming under or through the landlord;
- (6) all suits by or against headmen of villages or groups of villages (whether known as mankis or pradhans or manjhis or otherwise) for a declaration of title in, or for possession of, their office or agricultural land, whether based or not on an allegation of the existence or non-existence of the relationship of landlord and tenant;

(Secs. 140-142.)

(7) all suits, by landlords and others in receipt of the rent of land, against any agents employed by them in the management of land or the collection of rents, or the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession; and

(8) all suits and applications* in respect of which jurisdiction is conferred by this Act on the Deputy Commissioner

140. Subject to such rules (if any) as may be made in this behalf under section 264, a suit may be instituted before, or an application may be made to, the Deputy Commissioner collectively by or against any number of tenants holding land in the same village; and an allegation that such tenants are wrongly joined shall be no ground for dismissing a suit or refusing to hear an application; Collective suits or applications

but no order shall be passed in any such collective suit or on any such collective application unless the officer making the same is satisfied that all parties have had an opportunity to appear and make objection to any claims preferred against them;

and if at any time it appears to the Deputy Commissioner that the question between any two of the parties of whom one is so joined with others cannot conveniently be jointly tried or heard, the Deputy Commissioner may order a separate trial or hearing.

141. Every order or decree passed in any case which is tried or heard jointly under section 140 shall specify the extent to which each of the tenants named in the order or decree shall be affected thereby. Order or decree in collective suit or on collective application to specify how far it affects each tenant.

142. (1) Notwithstanding anything contained in section 257, a co-sharer landlord may institute a suit to recover from a tenant—

(a) his share of the rent, when such share is collected separately, or

(b) the whole of the rent due to the plaintiff and his co-sharers, when all or any of his co-sharers who refuse to join in the suit are made defendants therein.

(2) When, in a suit instituted under clause (b) of sub-section (1), the plaintiff is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant or the said landlords to furnish him with correct information on these points or either of them,

(Secs. 143-144.)

the Deputy Commissioner shall determine—

- (i) what sum (if any) is due to the plaintiff for rent, interest thereon, and costs, and
- (ii) what sums (if any) are due to the said landlords, respectively, on account of their share of the rent and interest thereon,

for the period in respect of which the suit is brought; and shall decree the suit accordingly.

(3) Notwithstanding anything contained in *Explanation I* to section 47, or in section 196, a decree awarding to a plaintiff a sum referred to in clause (i) of sub-section (2) shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.

(4) When the sums due from a tenant to any co-sharer landlord are determined under clause (ii) of sub-section (2), in respect of any period, then no further suit shall lie against such tenant for rent alleged to be due to such landlord in respect of that period.

Institution
of suits by
presentation
of statement
of claim.

143. Suits before the Deputy Commissioner under this Act shall be instituted by presenting a statement of claim, showing—

- (a) the name, description and place of abode of the plaintiff;
- (b) the name, description and place of abode of the defendant so far as they can be ascertained;
- (c) the substance of the claim, and.
- (d) the date of the cause of action.

Additional
particulars
required in
statement of
claim in
certain suits
and in certain
applications.

144. (1) In all suits and applications before the Deputy Commissioner for the recovery of an arrear of rent, or for the ejectment of a tenant from any tenure or holding, or for the recovery of occupancy or possession of any tenure or holding, the statement of claim or application shall contain, in addition to the particulars required by section 143,—

- (a) a specification of the situation and designation of the land held by the tenant, and
- (b) a specification of the extent and boundaries of such land, or (if the plaintiff is unable to specify the extent or boundaries) a description sufficient for the identification of the land.

(2) In all suits and applications referred to in sub-section (1) and in all other suits and applications before the Deputy Commissioner under this Act relating to the rent of land or to any right or easement arising out of land,

(Sec. 145.)

if a survey has been made and a record-of-rights has been finally published under this Act or under any law in force before the commencement of this Act, in respect of the land to which the suit or application relates,

the statement of claim or application shall further contain the following particulars, namely:—

- (i) a list of the survey plots comprised in the tenancy,
- (ii) a statement of the rental of the tenancy according to the record-of-rights, and
- (iii) a copy of all entries in the record-of-rights in regard to the subject-matter of the suit or application,

unless the Deputy Commissioner is satisfied, for reasons to be recorded in writing, that it is not necessary that such particulars or any of them should be furnished or that the plaintiff was prevented by any sufficient cause from furnishing such particulars or any of them:

Provided that, in all cases in which the Deputy Commissioner admits a statement of claim or application which does not contain the said particulars, he may direct the supply, without payment of fee, of a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy and the question in dispute in the suit or application.

(3) Where, since the record-of-rights was prepared and finally published, an alteration has been made in the area of the tenancy, the statement of claim must further show how the amount of the rent claimed in the suit has been calculated.

145. When any account-books, rent-rolls, collection-papers, measure-ment-papers or maps have been produced by the landlord before the Deputy Commissioner in any suit or proceeding under this Act, and have been admitted in evidence in the suit or proceeding or in any inquiry pending before the Deputy Commissioner,

Substitution of copies or extracts for original documents admitted in evidence.

copies of, or extracts from, such documents, certified by a duly authorized officer of the Court of the Deputy Commissioner to be true copies or extracts, may, with the permission of the Deputy Commissioner, be substituted on the record for the originals, which may then be returned to the landlord;

and thereafter copies or extracts, so certified, may be admitted in evidence in any other suit or proceeding instituted before the same or any other Deputy Commissioner under this Act, unless the Deputy Commissioner before whom they are produced sees fit to require the production of the originals.

(Secs. 146-153.)

Statement of claim by whom to be presented.

146. The statement of claim shall be presented by the plaintiff, or by an agent of the plaintiff who is acquainted with the facts of the case.

Signature and verification of statement of claim.

147. The statement of claim shall be subscribed and verified at the foot, by the plaintiff or his agent, in the following form:—

“ I, A B, do declare that the above statement is true to the best of my knowledge, information and belief.”

Production of documents by plaintiff.

148. (1) If the plaintiff relies in support of his claim on any document in his possession, he must produce such document before the Deputy Commissioner at the time of presenting his statement of claim.

(2) If such document be not so produced, it shall not afterwards be admitted unless the Deputy Commissioner, for sufficient reasons to be recorded in writing, thinks fit to admit it.

Production of documents by defendant.

149. If the plaintiff requires the production of any document in the possession or power of the defendant, he may, at the time of presenting his statement of claim, deliver a description of the document to the Deputy Commissioner, in order that the defendant may be directed to produce the document.

Return or amendment of statement of claim.

150. If the statement of claim does not contain the several particulars required by section 143 or by sections 143 and 144, as the case may be, or is not subscribed and verified as required by section 147, the Deputy Commissioner may return the statement to the plaintiff, or may at his discretion allow it to be amended.

Issue of summons to defendant.

151. If the statement of claim is in proper form, the Deputy Commissioner shall direct the issue of a summons to the defendant in the prescribed form.

Attendance of defendant personally or by agent.

152. If the plaintiff requires the personal attendance of the defendant, and satisfies the Deputy Commissioner that such personal attendance is necessary, or if the Deputy Commissioner of his own accord requires such personal attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons; otherwise the summons shall order the defendant to appear personally or by an agent who is acquainted with the facts of the case.

Production of documents and witnesses.

153. The said summons shall order the defendant to produce any document which he has in his possession and of which the plaintiff demands inspection, or upon which the defendant may intend to rely in support of his defence;

and shall also enjoin the defendant to bring his witnesses with him if they are willing to attend without issue of process.

(Secs. 154-160.)

154. If the amount of the cost of serving the summons be not deposited in the prescribed manner, the claim shall be rejected; but in such case the plaintiff may present another statement of claim at any time within the period provided by this Act for the limitation of suits.

Deposit of
cost of serv-
ing summons.

155. If, on the day fixed by the summons for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be postponed prior to the framing of issues as provided in section 167, neither of the parties appears in person or by agent, the case shall be struck off, with liberty to the plaintiff to bring a fresh suit unless precluded by the provisions for the limitation of suits contained in this Act.

Procedure
when neither
party
appears

156. If, on such day, only the defendant appears, the Deputy Commissioner shall dismiss the suit, unless the defendant admits the claim or part thereof, in which case the Deputy Commissioner shall pass a decree against the defendant upon such admission, without costs, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder:

Procedure
when only the
defendant
appears.

Provided that such decree, if there be more than one defendant, shall be only against the defendant who makes the admission.

157. If, on such day, only the plaintiff appears, the Deputy Commissioner, upon proof that the summons has been duly served, shall proceed to examine the plaintiff or his agent, and, after considering the allegations of the plaintiff and any documentary or oral evidence adduced by him, may either dismiss the case, or postpone the hearing of it to a future day for the attendance of any witness whom the plaintiff may wish to call, or decree the suit *ex parte* against the defendant.

Procedure
when only the
plaintiff
appears.

158. If the defendant relies on any document in support of his defence, he shall produce it before the Deputy Commissioner at the first hearing of the suit; and, if such document is not so produced, it shall not afterwards be admitted, unless the Deputy Commissioner, for sufficient reasons to be recorded in writing, thinks fit to admit it.

Production of
documents by
defendant.

159. If the defendant appears on any subsequent day to which the hearing of the suit may be postponed under section 157, the Deputy Commissioner may, upon such conditions (if any) as to costs or otherwise as he may think proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

Hearing of
defendant on
day to which
case is post-
poned.

160. A female plaintiff or defendant shall not be required to attend in person if of a rank or class which, according to the customs and manners of the country, would render it improper for her to appear in public.

Exemption
of women
from personal
attendance.

(Secs. 161-164.)

Employment
of agents.

161. (1) Any party to a suit before the Deputy Commissioner under this Act may employ an agent to conduct the case on his behalf; but the appointment of an agent shall not excuse the personal attendance of the plaintiff or defendant in cases where his personal attendance is required by the summons or by any order of the Deputy Commissioner.

(2) Processes served on any such agent shall be as effectual for all purposes in relation to the suit as if they had been served on the party in person; and all the provisions of this Act relating to the service of processes on a party to the suit shall be applicable to the service of processes on such agent.

Power to
grant time or
adjourn
hearing.

162. The Deputy Commissioner may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also from time to time, in order to secure further evidence, or for other sufficient reason to be recorded by him, adjourn the hearing or further hearing of any case in such manner as he may think fit.

Examination
and cross-
examination
of parties or
their agents,
and of
witnesses;
written
statement by
defendant.

163. (1) When both parties appear in person on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned under section 162, the Deputy Commissioner shall proceed to examine them, and either party or his agent may cross-examine the other.

(2) If either of the parties is not bound to attend personally, any agent by whom he appears shall be examined and cross-examined in like manner as the party himself would have been if he had attended personally.

(3) At his first appearance, or at any time before the issues are framed, the defendant may, with the leave of the Deputy Commissioner, file a written statement of his defence.

(4) Such statement shall be verified in the manner provided in section 147.

(5) If either of the parties produces a witness on the day aforesaid, the Deputy Commissioner may take the evidence of such witness.

Conduct and
record of
examination.

164. (1) The examination of the parties or their agents shall be conducted according to the law for the time being in force for the examination of witnesses.

(2) The depositions of parties, agents and witnesses shall be recorded in English, or, if the Deputy Commissioner is not sufficiently acquainted with English, then in the vernacular language of the Deputy Commissioner.

(Secs. 165-170.)

165. If the agent of either party is unable to answer any material question relating to the case, which the Deputy Commissioner is of opinion that the party whom he represents ought to answer and is likely to be able to answer if interrogated in person, the Deputy Commissioner may postpone the hearing of the case to a future day, and may direct that such party shall attend in person on such day;

Power to direct attendance of party whose agent cannot answer material question.

and, if such party fails to appear in person on the day appointed, the Deputy Commissioner may decide the suit as in case of default, or make such other order as he may deem proper in the circumstances of the case.

166. If, after the examination required by section 163, and after the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can properly be made without taking further evidence, the Deputy Commissioner shall make a decree accordingly.

Decree when to be made.

167. If it appears that the parties are at issue on any question upon which it is necessary to hear further evidence, the Deputy Commissioner shall frame issues, and shall fix a day for the examination of witnesses and the final hearing of the suit; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Deputy Commissioner.

Power to postpone trial to take further evidence.

168. The parties shall produce their witnesses on the day of the trial; and if either party requires assistance to procure the attendance of a witness on such day, either to give evidence or to produce a document, he shall apply to the Deputy Commissioner in sufficient time before such day to enable the witness to be summoned and to attend on that day; and, if the application be made in sufficient time as aforesaid, the Deputy Commissioner shall issue a summons requiring such witness to attend.

Production of witnesses.

169. (1) If, on the day fixed for the final hearing of the suit, neither of the parties appears, the case shall be struck off under the conditions provided in section 155.

Procedure when neither party appears on day fixed for final hearing of suit.

(2) If, on such day, only one of the parties appears, the suit may be tried and determined, in the absence of the other party, upon such proof as may then be before the Court.

170. (1) The Deputy Commissioner shall pronounce judgment in open Court.

Judgment

(2) The judgment shall be written in English, and shall contain the reasons for the decision, and shall be dated and signed by the Deputy Commissioner at the time when it is pronounced:

(Secs. 171-173.)

Provided that any judgment may be written in the vernacular if the Deputy Commissioner is not sufficiently acquainted with English.

Local
inquiries.

171. (1) The Deputy Commissioner may, at any stage of a suit or other proceeding before him under this Act,—

(a) cause a local inquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of the Government with the consent of the authority to whom such officer is subordinate, or by any other person whom the Deputy Commissioner may deem fit; or

(b) himself proceed to the spot and make such local inquiry in person.

(2) The provisions of the law for the time being in force, relating to local inquiries by Commissioners under orders of Civil Courts, shall apply to any local inquiry made under clause (a) of sub-section (1), and, so far as they are applicable, also to inquiries made under clause (b) of that sub-section.

(3) Where the Deputy Commissioner makes a local inquiry in person, he shall forthwith record on the proceedings any relevant facts which he has observed in the course of the inquiry; and such record shall be received as evidence in the suit or other proceeding aforesaid.

Payment into
Court by
defendant,
after tender
to plaintiff.

172. (1) The defendant in any suit before the Deputy Commissioner under this Act may, if he has duly tendered the same to the plaintiff before the institution of the suit, pay into Court such sum of money as he may consider to be due to the plaintiff, without paying in any costs incurred by the plaintiff up to the time of such payment; and such sum shall immediately be paid out of Court to the plaintiff.

(2) If, after such payment, the plaintiff elects to proceed with the suit, and ultimately obtains a decree for no more than was paid into Court, he may be charged with all costs of the suit incurred by the defendant; but, if the plaintiff ultimately obtains a decree for more than was paid into Court, the defendant may be charged with all costs of the suit.

ayment
into Court by
defendant,
without prior
tender to
plaintiff.

173. (1) The defendant in any suit before the Deputy Commissioner under this Act may, without having tendered the same to the plaintiff before the institution of the suit, pay into Court such sum of money as he may consider to be due to the plaintiff, together with the costs (to be fixed by the Deputy Commissioner, if necessary, as upon a suit originally instituted for the amount so paid into Court) incurred by the plaintiff up to the time of such payment; and such sum shall immediately be paid out of Court to the plaintiff.

(Secs. 174-176.)

(2) If, after such payment, the plaintiff elects to proceed with the suit, and ultimately obtains a decree for no more than was paid into Court, he may be charged with all costs of the suit incurred by the defendant subsequently to such payment; but, if the plaintiff ultimately obtains a decree for more than was paid into Court, the defendant may be charged with costs as upon a suit originally instituted for the whole amount for which the plaintiff ultimately obtains a decree, but shall have credit thereout for the amount of costs paid into Court by him in the first instance.

174. From the date on which any sum is paid into Court by the defendant under section 172 or section 173, no interest shall be allowed to the plaintiff on such sum, whether it be in full satisfaction of his claim or falls short thereof.

Prohibition
of interest on
sums paid
into Court

175. (1) In any suit for rent under this Act, if it appears to the Deputy Commissioner that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount due from him,

Power to
award dama-
ges to
plaintiff
in rent-suit.

and that he has not, before the institution of the suit, tendered such amount to the plaintiff or his agent, or, in case of refusal of the plaintiff or such agent to receive the amount tendered, has not deposited such amount in the Court of the Deputy Commissioner under section 55 before the institution of the suit,

the Deputy Commissioner may, for reasons to be recorded in writing, award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five *per centum* on the amount of rent decreed, as the Court may think fit, unless interest due under section 58 is decreed.

(2) Any damages so awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest, from the date of decree until payment thereof, at such rate *per centum* as the Deputy Commissioner deems reasonable.

176. In any suit for rent under this Act, if it appears to the Deputy Commissioner that the plaintiff has instituted the suit against the defendant without reasonable or probable cause.

Power to
award com-
pensation to
defendant in
rent-suit.

or that the defendant, before the institution of the suit, duly deposited in the Court of the Deputy Commissioner, under section 55, the full amount which the Deputy Commissioner finds to have been due to the plaintiff at the date of such deposit,

the Deputy Commissioner may, for reasons to be recorded in writing, award to the defendant, by way of compensation, such sum, not exceeding twenty-five *per centum* on the whole amount claimed by the plaintiff, as the Deputy Commissioner may think fit.

(Secs. 177-180.)

Procedure
where third
party claims
right to re-
ceive rent.

177. When in any suit before a Deputy Commissioner under this Act between a landlord and a tenant, the right to receive the rent of the land or tenure cultivated or held by the tenant is disputed, and such right is claimed by or on behalf of a third person on the ground that such third person, or a person through whom he claims, has actually and in good faith received and enjoyed such rent before and up to the time of the institution of the suit,

such third person shall be made a party to the suit, and the question of the actual payment of the rent to such third person in good faith shall be inquired into, and the suit shall be decided according to the result of such inquiry:

Provided that such decision shall not affect the right of any party, who may have a legal title to such rent, to establish such title by suit in a Civil Court, if instituted within one year from the date of the decision.

Suit for
ejectment of
non-occupan-
cy-raiyat or
cancelment of
lease of any
tenant, for
arrears of
rent.

178. (1) Any landlord desiring to eject a non-occupancy-raiyat on the ground that he has failed to pay an arrear of rent, or to cancel the lease of any tenant on account of the non-payment of arrears of rent, may sue for such ejectment or cancelment and for the recovery of the arrears in the same suit, or may, in a suit for such ejectment or cancelment, adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrears.

(2) In all cases of suits for the ejectment of a non-occupancy-raiyat for non-payment of arrears of rent, or for the cancelment of a lease for non-payment of arrears of rent, the decree shall specify the amount of the arrear; and if such amount, together with interest and costs of suit, be paid into Court within thirty days from the date of the final decree, the decree shall not be executed.

(3) The Deputy Commissioner may, for special reasons to be recorded in writing, extend the period of thirty days mentioned in sub-section (2).

Power of
Deputy Com-
missioner to
grant lease to
raiyat in
default of
landlord.

179. If a decree is given for the grant of a lease to a raiyat, and the landlord fails, for a period of three months after the date of the decree, to grant such lease, the Deputy Commissioner may grant a lease, in conformity with the terms of the decree, under his own hand and seal; and such lease shall have the same force and effect as if granted by the landlord.

Procedure
where tenant
fails to deliver
counterpart
engagement
to landlord.

180. If a decree is given for the delivery of a counterpart engagement by a tenant to a landlord, and the tenant fails, for a period of three months after the date of the decree, to deliver such counterpart, the decree shall be evidence of the amount of rent claimable from such tenant, and a copy of the decree under the hand and seal of the Deputy

(Secs. 181-186.)

Commissioner shall have the same force and effect as a counterpart engagement delivered by the tenant to the landlord.

Execution of Decrees and Orders of the Deputy Commissioner.

181. No process of execution of any description whatsoever shall be issued on any decree or order passed by a Deputy Commissioner under this Act, except upon an application made within three years from—

Limitation,
of time for
application
for execution

- (a) the date on which the decree or order is signed, or
- (b) where there has been an appeal, the date of the final decree or order of the Appellate Court, or
- (c) where there has been a review of judgment, the date of the decision passed on the review.

182. A decree or order passed by a Deputy Commissioner under this Act may be executed either by his own Court or by any other prescribed Court.

Decrees and
orders by
what Court to
be executed.

183. Every application for the execution of a decree or order passed by a Deputy Commissioner under this Act shall be in writing, shall be made in the prescribed form, and shall be verified by the applicant or his agent in the form provided in section 147.

Form of
application
for execution.

184. Process of execution may be issued against either the person or the property of a judgment-debtor, but shall not be issued simultaneously against both person and property.

Issue of
process of
execution.

185. Every warrant of execution against the person or movable property of a judgment-debtor shall be in the prescribed form.

Form of
warrant of
execution
against
person
or movable
property.

186. The following particulars shall be exempt from attachment and sale in execution of any decree or order passed by a Deputy Commissioner under this Act, namely:—

Exemptions
from attach-
ment and
sale.

- (a) the necessary wearing apparel and bedding of the judgment-debtor, his wife and children;
- (b) tools and implements of husbandry, and such cattle and seed grain as may, in the opinion of the Deputy Commissioner, be necessary to enable the judgment-debtor to earn his livelihood as an agriculturist;
- (c) the materials of houses and other buildings belonging to and occupied by agriculturists;
- (d) books of account;
- (e) any right of personal service;

(Secs. 187-191.)

- (f) stipends and gratuities allowed to military and civil pensioners of the Government, and political pensions;
- (g) the wages of labourers and domestic servants;
- (h) a right to future maintenance:

Provided that nothing in this section shall be deemed to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent.

Explanation.—The particulars mentioned in clauses (f) and (g) are exempt from attachment or sale whether before or after they are actually payable.

Indication
of movable
property to
be seized.

187. (1) Any movable property required to be seized under a warrant of execution shall, if practicable, be described in a list to be furnished by the judgment-creditor; but, if the creditor is unable to furnish such list, he may apply for a general seizure of the debtor's effects to the amount of the judgment and costs.

(2) In either case the property to be seized shall be pointed out by the creditor or his agent to the officer entrusted with the execution of the warrant.

Duration of
warrant of
execution.

188. Every warrant of execution shall bear the date of the day on which it is signed by the Deputy Commissioner, and shall continue in force for such period as the Deputy Commissioner may direct, not being more than sixty days from such date.

Second and
successive
warrants of
execution.

189. Second and successive warrants of execution may be issued, by order of the Deputy Commissioner, on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

Notice when
to be given
before issue
of warrant of
execution.

190. (1) A warrant of execution shall not be issued upon any decree or order without previous notice to the party against whom execution is applied for, if, when application for the issue of the warrant is made, a period of more than one year has elapsed from the date of the decree or order, or from the date of the last previous application for execution.

(2) A warrant of execution shall not be issued against the heir or other representative of a deceased party without previous notice to such representative to appear and be heard.

Procedure
when judg-
ment-debtor
is arrested.

191. (1) If a warrant is issued against the person of a judgment-debtor, the officer charged with the execution of the warrant shall bring him with all convenient speed before the Deputy Commissioner.

(2) If the decree in execution of which the judgment-debtor was arrested is a decree for money, and if he does not immediately deposit in

(Secs. 192-193.)

Court the full amount specified in the warrant, or make arrangements, satisfactory to the judgment-creditor, for the payment of the same, or satisfy the Deputy Commissioner that he has no present means of paying the same,

the Deputy Commissioner shall send him to the civil jail, there to remain for such time as may be directed by warrant addressed to the keeper of the jail, unless in the meantime he pays the said amount:

Provided that no judgment-debtor shall be imprisoned in execution of a decree under this Act for a longer period than six months or (if the decree is for the payment of a sum of money not exceeding fifty rupees) six weeks.

(3) If the decree in execution of which the judgment-debtor was arrested is a decree for the delivery of papers or accounts, and if the papers or accounts are not immediately delivered by him to the Deputy Commissioner,

the Deputy-Commissioner may commit him to the civil jail, there to remain for such time, not exceeding six months, as the Deputy Commissioner may direct, unless in the meantime he delivers the papers or accounts according to the terms of the decree.

192. (1) When any judgment-debtor has been discharged from the civil jail, he shall not be imprisoned a second time under the same decree or order.

Further proceedings after discharge from jail.

(2) If the amount due under such decree or order does not exceed fifty rupees, the Deputy Commissioner may declare such discharged person to be absolved from liability thereunder.

(3) In other cases the discharge shall not extinguish the liability of the discharged person under such decree or order, or exempt property belonging to him from attachment in execution thereof.

193. (1) Any person who applies for a warrant of execution against the person of a judgment-debtor shall deposit in Court, at the time of the issue of the warrant, diet-money for thirty days, at such rate as the Deputy Commissioner may direct, for the subsistence of the prisoner.

Diet-money for subsistence of prisoners.

(2) The said person shall also pay diet-money, at the same rate, before the commencement of each succeeding month of the imprisonment; and, if he fails to make any such payment, the prisoner shall be discharged.

(3) All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit; and any diet-money not so spent shall be returned to the person who paid it.

(Secs. 194-197.)

Execution of
decree or
order for
ejectment or
re-instate-
ment of
cultivator.

194. (1) If the decree or order is for the ejectment of any cultivator from land occupied by him, or for the re-instatement of any cultivator in the occupancy of land from which he has been ejected, the decree or order shall be executed by giving the possession or occupancy of the land to the person entitled by the decree or order to such possession or occupancy.

(2) If any opposition to the execution of the order for giving such possession or occupancy is made by the party against whom the order is made, the Deputy Commissioner shall, in the exercise of his powers as a Magistrate, give effect to the order.

Execution of
decree or
order for
cancelment
of lease, for
ejectment or
for re-instate-
ment of
tenant not
being an
actual culti-
vator.

195. If the decree or order is for the cancelment of any lease or the ejectment of any tenant (not being an actual cultivator), or for the reinstatement of any tenant (not being an actual cultivator) in the possession of a tenancy from which he has been ejected, the decree or order shall be executed—

- (a) by proclaiming its substance to the cultivators or other occupants of the tenancy by beat of drum, or
- (b) by notification reciting the substance of the decree or order and affixed in some conspicuous place within, or adjacent to, the tenancy, or
- (c) in such other manner as may be prescribed.

Execution of
decree for
rent given in
favour of
sharer in un-
divided estate
or tenure.

196. If a decree is given by the Deputy Commissioner under this Act, in favour of a sharer in a joint undivided estate or tenure, for money due to him on account of his share of the rent of any tenure comprised in such undivided estate or tenure,

application for the sale of such tenure shall not be received unless execution has first been taken out against any movable property which the judgment-debtor may possess within the district in which the suit was instituted, and unless the sale of such property (if any) has proved insufficient to satisfy the decree;

and such tenure may then, with the previous sanction of the Commissioner, but not otherwise, be sold, in execution of the decree, in the manner in which any other immovable property may be sold in execution of a decree for money under the provisions of clause (b) of section 210.

Execution of
rent decree
obtained by
a co-sharer
landlord.

197. When one or more co-sharer landlords applies or apply for the execution of a decree obtained in a suit instituted under clause (b) of section 142, by the sale of a tenure or holding, the Court executing such decree shall, before proceeding to sell the tenure or holding, give notice of the application for execution to the other co-sharers.

(Secs. 198-202.)

198. In the execution of any decree or order by the Deputy Commissioner under this Act for the payment of money, not being money due or recoverable as an arrear of rent,

if satisfaction of the decree or order cannot be obtained by execution against the person or movable property of the debtor within the district in which the suit was instituted,

the judgment-creditor may apply for execution against any immovable property belonging to such debtor;

and such immovable property may, with the sanction of the Commissioner, but not otherwise, be brought to sale in the manner provided in clause (b) of section 210.

Sales in Execution of Decrees of the Deputy Commissioner.

199. (1) For the purpose of executing a warrant of execution issued by the Deputy Commissioner under this Chapter against the movable property of a judgment-debtor, the officer charged with the execution of the warrant shall prepare a list of the property pointed out by the judgment-creditor; and shall publish a proclamation specifying the day upon which the sale is intended to be held, and a copy of the said list, at the intended place of sale and at the residence of the debtor.

(2) A copy of the said list and proclamation shall be transmitted to the Deputy Commissioner, and shall be affixed in his office.

(3) Until the day of sale, the said property shall remain in the custody of the officer executing the warrant.

200. No sale of any movable property (other than perishable property) seized in execution under this Chapter shall be made until the expiration of a period of ten days after the day on which the property was so seized.

201. (1) Such sale shall be held at the place where the property is deposited, or at the nearest market or other place of public resort if the officer executing the warrant thinks it is likely to sell there to better advantage.

(2) The property shall be sold by public auction, in one or more lots as the officer executing the warrant may think advisable; and if the judgment-debt, and the costs of the execution and sale, are realized by the sale of a portion of the property, the execution shall immediately be withdrawn with respect to the remainder.

202. Officers executing warrants for the sale of property under this Chapter, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Execution against immovable property in certain cases if judgment not satisfied.

Notification of intended sale of movable property and custody of property.

Interval between seizure and sale.

Place and manner of sale.

Prohibition of purchase by officers.

(Secs. 203-206.)

Postpone-
ment of sale
if fair price
be not
offered.

203. If, on the property being put up for sale, no price which the officer executing the warrant considers fair is offered for it, and the owner of the property, or some person authorized to act on his behalf, applies to have the sale postponed until the next day, or the next market day if a market be held at the place of sale or in the vicinity, the sale shall be postponed until such day, and shall then be completed at whatever price may be offered for the property.

Payment of
purchase-
money and
delivery of
property to
purchaser.

204. (1) The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer executing the warrant may direct; and, in default of such payment, the property shall again be put up and sold.

(2) When the purchase-money has been paid in full, the officer executing the warrant shall deliver the property to the purchaser, with a certificate describing the property and stating the price paid.

Application
of proceeds
of sale.

205. (1) From the proceeds of the sale, the officer executing the warrant shall make a deduction, at the rate of one anna in the rupee, on account of the costs of the sale, and shall transmit the amount so deducted to the Deputy Commissioner in order that it may be credited to the Government.

(2) The said officer shall deal with the rest of the proceeds in the prescribed manner.

Procedure
where third
party claims
interest in
property
seized.

206. (1) If, before the day fixed for the sale, a third party appears before the Deputy Commissioner and claims a right or interest in any of the movable property seized in execution, the Deputy Commissioner shall examine such party or his agent according to the law for the time being in force relating to the examination of witnesses; and, if he sees sufficient reason for so doing, may stay the sale of such property.

(2) The Deputy Commissioner shall, after taking evidence, adjudicate upon such claim, and shall make such order thereupon as he thinks fit.

(3) If the claimant fails to establish his right to the property seized in execution, the Deputy Commissioner may, by his order under subsection (2), award to the judgment-creditor against the claimant, in addition to the costs of the proceedings, such sum as the Deputy Commissioner may consider sufficient to cover any loss of interest or any other damage which the judgment-creditor has sustained by reason of the postponement of the sale.

(4) The party against whom any order is passed by the Deputy Commissioner under this section may, at any time within one year from the date of the order, bring a suit in the Civil Court to establish his right:

Provided that, if the property has been sold, the suit shall not be for the recovery of the property, but for damages against the judgment-creditor by whom the property was brought to sale.

(Secs. 207-209.)

207. No irregularity in publishing or conducting a sale of movable property under a warrant of execution issued under this Chapter shall vitiate such sale; but nothing contained in this section shall bar any person who sustains damage by reason of any such irregularity from recovering damages by suit in the Civil Court, if instituted within one year from the date of the sale.

Irregularities
not to vitiate
sale.

Act
of 1865.

208. (1) When a decree passed by the Deputy Commissioner under this Act is for an arrear of rent due in respect of a tenure or holding, the decree-holder may apply for the sale of such tenure or holding, and the tenure or holding may thereupon be brought to sale, in execution of the decree, according to the provisions for the sale of under-tenures contained in the Bengal Rent Recovery (Under-tenures) Act, 1865,^[1] and all the provisions of that Act, except sections 12, 13, 14 and 15 thereof, shall, as far as may be, apply to such sale:

Sale of
tenure or
holding in
execution of
decree for
arrears of
rent.

Provided that the purchaser of a tenure at any such sale shall not be entitled to annul any lease, right or tenancy referred to in clauses (a) to (e) of section 14 of this Act:

Provided also that the Commissioner may, by order, in any case in which he may consider it desirable so to do,—

(a) prohibit the sale of any tenure or portion thereof, or

(b) stay any such sale for any period specified in the order:

Provided also that any sale of a resumable tenure under this section shall not affect the right of the grantor or his successor in title to resume such tenure, but shall be made subject to such right.

(2) When a warrant of execution has been issued under this Chapter against the person or movable property of the judgment-debtor, no application shall be received under sub-section (1) while such warrant remains in force.

209. (1) In disposing of the proceeds of the sale of a tenure or holding under section 208, the following procedure shall be observed, that is to say:—

Disposal of
proceeds of
sale under
section 208.

(a) there shall be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;

(b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;

(c) if there remains a balance after those sums have been paid, there shall be paid to the decree-holder therefrom any rent

(Sec. 210.)

which may have accrued due to him in respect of the tenure or holding between the institution of the suit and the date of the sale; and

- (d) the balance (if any) remaining after the payment of rent referred to in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application:

Provided that, where a tenure or holding has been sold in execution of a decree obtained by one or more co-sharer landlords in a suit instituted under clause (b) of section 142,—

- (i) payment of the amount due under such decree shall, notwithstanding anything contained in clause (b) of this section, be made to the decree-holder and to the other co-sharer landlords in proportion to the amount found to be due to each, and

- (ii) if there remains a balance, payment of any rent which may have accrued due in respect of the tenure or holding between the institution of the suit and the date of sale shall, notwithstanding anything contained in clause (c), but subject to the determination, in the manner and with the effect mentioned in sub-section (2), of any dispute as to their respective rights to receive such rent, be made to the said decree-holder and other co-sharer landlords in proportion to their respective shares in the tenure or holding.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Deputy Commissioner shall determine the dispute, and the determination shall have the force of a decree.

Sale of the property in execution of decree for arrears of rent of tenure or holding.

210. (1) If, after the sale of a tenure or holding in pursuance of section 208, any portion of the amount decreed remains due, process may be applied for against any other property, movable or immovable, belonging to the judgment-debtor.

(2) Notwithstanding anything contained in sub-section (1), a decree-holder may, with the permission of the Deputy Commissioner, granted for reasons to be recorded in writing, proceed against any other property, movable or immovable, of the judgment-debtor, without first making application for the sale of the tenure or holding in respect of which the arrear has accrued.

(3) Property referred to in sub-sections (1) and (2) may be brought to sale—

- (a) if movable, in the manner provided in sections 199 to 205, and

(Secs. 211-212.)

- (b) if immovable, in the manner provided in sections 237, 238, 274 to 276, 278 to 284, 286, 287, 289 to 294, 305 to 310, 312 to 316, 318, 319, 334 and 335 of the Code of Civil Procedure.[¹]

211. (1) If, before the day fixed for the sale of any tenure or holding in pursuance of section 208, a third party appears before the Deputy Commissioner and alleges that he, and not the person against whom the decree has been obtained, was in lawful possession of, or had some interest in, the tenure or holding when the decree was obtained,

Procedure where third party claim to be in lawful possession of tenure or holding.

the Deputy Commissioner shall examine such party according to the law for the time being in force relating to the examination of witnesses; and if he sees sufficient reason for so doing, and if such party deposits in Court or gives security for the amount of the decree, the Deputy Commissioner shall stay the sale, and shall, after taking evidence, adjudicate upon the claim:

Provided that no such adjudication shall be made if the Deputy Commissioner considers that the claim was designedly or unnecessarily delayed:

Provided also that no transfer of a tenure shall be recognised unless it has been registered in the office of the landlord or sufficient cause for non-registration is shown to the satisfaction of the Deputy Commissioner.

(2) The party against whom judgment is given by the Deputy Commissioner under sub-section (1) may, at any time within one year from the date of the judgment, bring a suit in the Civil Court to establish his right.

212. (1) When any immovable property has been sold under this Chapter in execution of a decree, any person who owned such property immediately before the sale, or who claims an interest therein under a title lawfully acquired before the sale, may, at any time within a period of thirty days from the date of the sale, apply to have the sale set aside on his depositing in the Court of the Deputy Commissioner,—

Application to set aside sale of immovable property, on deposit of amount and compensation to purchaser

(a) for payment to the purchaser—a sum equal to five per centum of the purchase-money, and

(b) for payment to the decree-holder—the amount specified in the proclamation of sale as that for the recovery of which

[¹] Act 14 of 1893 has been repealed and re-enacted by the Code of Civil Procedure, 1908, and the provisions of the former Act have been taken to be made to rules 13, 14, 54 and 55, 56 and 70, 67 to 69, 73, 74, 75, 76 to 78, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

(Secs. 213-215.)

the sale was ordered, less any amount which may, since the date of such proclamation and sale, have been received by the decree-holder:

Provided that, if a person applies under section 213 to set aside the sale of his immovable property, he shall not be entitled to make an application under this section.

(2) If the said deposits are made within the said period, the Court shall pass an order setting aside the sale, and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale so set aside.

XIV. of 1882.

213. (1) When any immovable property has been sold under this Chapter in execution of a decree, the decree-holder or the person who owned such property immediately before the sale may apply to the Deputy Commissioner to set aside the sale on the ground of a material irregularity in publishing or conducting it; but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Deputy Commissioner that he has sustained substantial injury by reason of such irregularity:

Provided that, if a person applies under section 212 to set aside the sale of his immovable property, he shall not be entitled to make an application under this section.

(2) If an application be made under this section, and if the objection be allowed, the Deputy Commissioner shall pass an order setting aside the sale.

214. No suit or application shall be entertained in any Court to set aside, or to modify the effect of, any sale made under this Chapter, save under section 212 or section 213 or on the ground of fraud or want of jurisdiction.

Appeals.

215. (1) All orders passed by a Deputy Commissioner under the foregoing provisions of this Act, not being—

- (a) judgments in suits, or
- (b) orders passed in the course of suits and relating to the trial thereof, or
- (c) orders passed after decree and relating to the execution thereof, or
- (d) orders passed under section 206 or section 211,

shall be appealable—

- (i) to the Commissioner, or

Application to set aside sale of immovable property on ground of irregularity.

Grounds on which suit or application to set aside sale may be brought.

Appeal from orders of Deputy Commissioners.

(Secs. 216-219.)

(u) if passed by a Deputy Collector exercising powers of a Deputy Commissioner—to the Deputy Commissioner.

(2) No judgment of a Deputy Commissioner in any suit, and no order of a Deputy Commissioner passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof, shall be open to revision or appeal otherwise than as expressly provided in this Act.

XIV of 1882. (3) Orders passed after decree and relating to the execution thereof (except orders passed under section 206 or section 211 of this Act or under section 280, section 281 or section 282 of the Code of Civil Procedure)[¹] shall be appealable to the Court to which an appeal from the decree itself would lie.

216. Every appeal under section 215 shall be presented to the Commissioner or the Deputy Commissioner, as the case may be, within thirty days from the date of the order.

Limitation of appeal from such orders.

217. Orders passed by the Commissioner or Deputy Commissioner in appeals preferred under section 215 shall not be open to any further appeal; but the Board or (in the case of appeals decided by the Deputy Commissioner) the Commissioner may call for any case and pass such orders thereon as it or he may think proper.

Bar to further appeals, with proviso for revision by Board or Commissioner.

218. (1) In suits referred to in clause (3) or clause (7) of section 139, tried and decided by a Deputy Commissioner, if the amount sued for, or the value of the property claimed, does not exceed one hundred rupees, the judgment of the Deputy Commissioner shall be final, and not open to revision or appeal except as provided in sub-section (2), unless in any such suit a question relating to a title to land, or to some interest in land, as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in section 224.

Appeal in certain suits.

(2) When any such suit in which, if tried and decided by a Deputy Commissioner, the judgment of the Deputy Commissioner would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector shall lie to the Deputy Commissioner.

219. Every petition of appeal to the Deputy Commissioner under section 218, sub-section (2), shall be presented within thirty days from the date on which the decree appealed against was signed.

Appeal to Deputy Commissioner when to be presented

[¹] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rules 60, 61 and 62 of Order XXI in Schedule I to that Code, see s. 158 thereof, in the General Acts, 1904-06, Ed. 1909, p. 184.

(Secs. 220-224.)

Appeal when
to be heard.

220. (1) The Deputy Commissioner or the Commissioner, as the case may be, shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent.

(2) If, on the day fixed for hearing the appeal, or on any other day to which the hearing may be adjourned, the appellant does not appear in person or by agent, the appeal shall be dismissed for default.

(3) If on such day the appellant appears and the respondent does not appear in person or by agent, the appeal shall be heard *ex parte*.

Re-admission
of appeal.

221. If an appeal is dismissed for default of prosecution, the appellant may, within thirty days from the date of the dismissal, apply to the Deputy Commissioner or the Commissioner, as the case may be, for the re-admission of the appeal; and, if it is proved to the satisfaction of the Deputy Commissioner or the Commissioner, as the case may be, that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Deputy Commissioner or the Commissioner, as the case may be, may re-admit the appeal.

Re-hearing of
appeal on
application of
respondent
against whom
ex parte
decree passed.

222. When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that notice was not duly served or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

Judgment in
appeal.

223. After hearing the appeal, the Deputy Commissioner or the Commissioner, as the case may be, shall give judgment in the manner provided in section 170 for giving judgment in original suits.

Appeal to
Judicial Com-
missioner or
High Court.

224. (1) In all suits before a Deputy Commissioner under this Act, **except—**

- (a) suits in which, when tried and decided by a Deputy Commissioner, the judgment of the Deputy Commissioner is declared by section 218, sub-section (1), to be final, and
- (b) suits in which, when tried and decided by a Deputy Collector, an appeal is allowed by section 218, sub-section (2), to the Deputy Commissioner,

an appeal from the judgment of the Deputy Commissioner or Deputy Collector shall lie to the Judicial Commissioner, unless the amount or value in dispute exceeds five thousand rupees, in which case the appeal shall lie to the High Court.

(2) A second appeal shall lie to the High Court, under Chapter XLII of the Code of Civil Procedure, from any appellate decree passed XIV of 1882.

(Secs. 225-227.)

by the Judicial Commissioner under this Chapter, or from any order passed by him on appeal under section 215, sub-section (3).

225. (1) Where, in analogous suits, some appeals have been presented to the Deputy Commissioner and others to the Judicial Commissioner, the Judicial Commissioner may, on the application of any of the parties, transfer to his own Court the appeals pending in the Court of the Deputy Commissioner.

Hearing of appeals by Judicial Commissioner, instead of by Deputy Commissioner.

(2) Where, in analogous suits, some appeals lie to the Deputy Commissioner and others to the Judicial Commissioner, a plaintiff or defendant whose appeal would ordinarily lie to the Deputy Commissioner may, if an appeal in any such suit has been presented by any other plaintiff or defendant to the Judicial Commissioner and admitted, present his appeal to the Judicial Commissioner instead of to the Deputy Commissioner, and the Judicial Commissioner may hear and decide the same.

226. Appeals to the Judicial Commissioner or to the High Court under this Chapter shall be presented within the time provided for the presentation of appeals to a District Judge or the High Court, as the case may be, under the Code of Civil Procedure^[1] by the law for the time being in force for the limitation of appeals.

Limitation of appeal to Judicial Commissioner or High Court.

227. (1) No appeal by a plaintiff or defendant shall lie from a judgment or order passed against him by default, for non-appearance, whether such judgment or order were given under section 155, section 156, section 157 or section 169.

Power to set aside judgment or order passed *ex parte* by default.

(2) If the party against whom any such judgment or order has been given appears, either in person or by agent,—

(a) if a plaintiff, within thirty days from the date of the Deputy Commissioner's order, and

(b) if a defendant, within thirty days after any process for enforcing the judgment has been executed,

or at any earlier period, and shows sufficient cause for his previous non-appearance, and satisfies the Deputy Commissioner that there has been a failure of justice, the Deputy Commissioner may, upon such terms and conditions as to costs or otherwise as he may think proper, receive the suit and set aside the judgment or order.

(3) No judgment or order shall be altered or set aside under sub-section (2) without previously summoning the opposite party to appear and be heard in support of it.

[¹] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to the latter Act, see s. 158 thereof, in the General Acts, 1904-08, Ed. 1909, p. 184.

(Secs. 228-234.)

Order to set aside judgment final, but rejection of application to set aside appealable.

228. In all cases in which the Deputy Commissioner, under section 227, passes an order setting aside a judgment or order, the order shall be final; but in all appealable cases in which the Deputy Commissioner, under that section, rejects an application for setting aside a judgment or order, an appeal shall lie from the order of rejection to the tribunal to which the final decision in the suit would be appealable, provided that the appeal be preferred within the time allowed for an appeal from such final decision.

Application of section 561 of the Code of Civil Procedure.

229. The provisions of section 561 of the Code of Civil Procedure XIV of 1882 shall, so far as applicable, apply to all appeals under this Act from decisions of the Deputy Commissioner.

CHAPTER XVII.

LIMITATION.

Application of the Indian Limitation Act, 1877.

230. The provisions of the Indian Limitation Act, 1877^[1] shall, so far as they are not inconsistent with this Act, apply to all suits appeals and applications under this Act.

General rule of limitation.

231. All suits and applications instituted or made under this Act, for which no period of limitation is provided elsewhere in this Act, shall be commenced and made respectively within one year from the date of the accruing of the cause of action :

Provided that there shall be no period of limitation for applications under sections 28, 31, 34, 50, 61, 75, 105 or 121.

Limitation of suits and applications for grant of leases, etc.

232. Suits and applications for the delivery of leases or counterpart engagements, or for the determination of the rates of rent payable for lands held by a tenant, may be instituted and made, respectively, at any time during the tenancy.

Limitation of certain suits for ejectment.

233. Suits for the ejectment of an occupancy-raiyat or a non-occupancy-rayat on any of the grounds mentioned in section 22 or in clauses (b) and (c) of section 41 shall be instituted within two years from the date of the misuse or breach complained of.

Limitation of suits and applications for arrears of rent.

234. Suits and applications under section 244, for the recovery of arrears of rent, shall be instituted within three years from the end of the agricultural year in which the arrear became due.

^[1] Act 15 of 1877 has been repealed and re-enacted by the Indian Limitation Act, 1908 (9 of 1908), printed in the General Acts, 1904-08, Ed. 1909, p. 476, and this reference should now be construed as a reference to the latter Act, see the General Clauses Act, 1897 (10 of 1897), s. 8, in the General Acts, 1887-97, Ed. 1909, p. 579.

(Secs. 235-239.)

235. (1) Where a landlord has instituted a suit against a tenant or applied for a certificate under section 240 against a Mundari khunt-kattidar, for the recovery of any rent of his tenancy, the landlord shall not institute another suit or apply for another such certificate against him for the recovery of any rent of that tenancy until after six months from the date of the institution or making of the previous suit or application.

Successive suits or applications for recovery of rent

(2) Nothing in sub-section (1) shall prohibit a fresh suit for rent when a former suit has been withdrawn with leave to sue again, or when a claim has been rejected under section 154, or when a case has been struck off under section 155 or section 169.

236. Suits for the recovery of money in the hands of an agent, or for the delivery of accounts or papers by an agent, may be brought at any time during the agency, or within one year after the determination of the agency, of such agent:

Limitation of suits against agents for money, accounts or papers.

Provided that, if the person having the right to sue has, by fraud, been kept from knowledge of the receipt of any such money by the agent, or if any fraudulent account has been rendered by the agent, the suit may be brought within one year from the time when the fraud first became known to such person; but no such suit shall in any case be brought at any time exceeding three years from the termination of the agency.

237. Applications for the recovery of possession of a holding, or any portion thereof, from which an occupancy-raiyat has been unlawfully ejected must be instituted within three years from the date of such ejection.

Limitation of applications for recovery of possession of holding.

238. Suits or applications for recovery of possession of his office or agricultural land by a headman of a village or group of villages, whether known as manki or pradhan or manjhi or otherwise, against a landlord or any person holding by virtue of any assignment from a landlord, must be instituted or made within three years from the date of dispossession.

Limitation of suits or applications by village headmen for recovery of possession.

CHAPTER XVIII.

SPECIAL PROVISIONS WITH RESPECT TO MUNDARI KHUNT-KATTIDARS.

239. Such of the preceding sections as are applicable to Mundari khunt-kattidars shall, in their application to such persons and their tenancies, be read subject to the provisions of the following sections in this Chapter.

Application of preceding sections to Mundari khunt-kattidari tenancies.

(Sec. 240.)

Restrictions
on transfer of
Mundari
khunt-katti-
dari tenan-
cies.

240. (1) No Mundari khunt-kattidari tenancy or portion thereof shall be transferable by sale, whether in execution of a decree or order of a Court or otherwise :

Provided that, when a decree or order has been made by any Court for the sale of any such tenancy or portion thereof, in satisfaction of a debt due under a mortgage (other than a usufructuary mortgage) which was registered before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1903,^[1] the sale may be made with the previous sanction of the Deputy Commissioner. Ben. Act V of 1903.

(2) If the Deputy Commissioner refuses to sanction the sale of any such tenancy or portion thereof under the proviso to sub-section (1), he shall attach the land and make such arrangement as he may consider suitable for liquidating the debt.

(3) No mortgage of a Mundari khunt-kattidari tenancy or any portion thereof shall be valid, except a bhugut bandha mortgage for a period, expressed or implied, which does not exceed or cannot in any possible event exceed seven years.

(4) No lease of a Mundari khunt-kattidari tenancy or any portion thereof shall be valid, except a lease of one or other of the following kinds, namely :—

- (a) mukarari leases of uncultivated land, when granted to a Mundari or a group of Mundaris for the purpose of enabling the lessees or the male members of their families to bring suitable portions of the land under cultivation;
- (b) leases of uncultivated land, when granted to a Mundari cultivator to enable him to cultivate the land as a raiyat.

Explanation.—The expression “uncultivated land,” as used in this sub-section, includes land which, though formerly cultivated, is not, at the time the lease is granted, either under cultivation or in the occupation of the lessee for purposes of cultivation.

(5) Where a Mundari khunt-kattidari tenancy is held by a group of Mundari khunt-kattidars no bhugut bandha mortgage or mukarari lease of the tenancy or any portion thereof shall be valid, unless it is made with the consent of all the Mundari khunt-kattidars.

(6) No transfer of a Mundari khunt-kattidari tenancy or any portion thereof, by any contract or agreement made otherwise than as provided in the foregoing sub-sections, shall be valid; and no such contract or agreement shall be registered.

[1] Repealed by this Act, see s. 2 and Sch. A.

(Secs. 241-243.)

Ben. Act V
of 1903.

(7) Nothing in the foregoing sub-sections shall affect any sale or, except as declared in the proviso to sub-section (1), any mortgage, or any lease, made before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1903.[¹]

241. (1) Notwithstanding anything contained in section 240, a Mundari khunt-kattidar may, without the consent of his landlord, transfer the land comprised in his tenancy, or any part thereof, for any reasonable and sufficient purpose having relation to the good of the tenancy or of the tenure or estate in which it is comprised, such as the use of the land for any charitable, religious or educational purpose or for the purposes of manufacture or irrigation, or as building ground for any such purpose, or for access to land used or required for any such purpose:

Transfer for
certain pur-
poses

Provided that the transfer shall be made by registered deed, and that, before the deed is registered and the land transferred, the written consent of the Deputy Commissioner shall be obtained to the terms of the deed and to the transfer.

(2) Before consenting to any such transfer, the Deputy Commissioner shall satisfy himself that the landlord and other co-sharers in the tenancy are adequately compensated for the loss (if any) caused to them by the transfer; and, where only part of the land comprised in the tenancy is transferred, may, if he thinks fit, apportion between the transferee and the original tenant all dues payable for the tenancy.

(3) An appeal against any order of a Deputy Commissioner consecuting or refusing to consent to any such transfer shall lie as provided in Chapter XVI.

242. If any person obtains possession of a Mundari khunt-kattidari tenancy or any portion thereof in contravention of the provisions of section 240, the Deputy Commissioner may eject him therefrom;

Ejection of
persons un-
lawfully
obtaining
possession
of such
tenancies

and if the tenancy was, before such possession was obtained entered as a Mundari khunt-kattidari tenancy in a record-of-rights finally published under this Act or under any law in force before the commencement of this Act, no suit shall be maintainable in any Court in respect of such ejection; but an appeal shall lie as provided in Chapter XVI.

243. (1) The rent of a Mundari khunt-kattidari tenancy may be enhanced only—

Enhancement
of rent.

(a) by an order of the Deputy Commissioner, and

(b) if it be shown before the Deputy Commissioner that the tenancy was created within a period of twenty years

[¹] Repealed by this Act, see s 2 and Sch. A.

(Sec. 244.)

immediately preceding the presentation of the petition for enhancement.

(2) An order of the Deputy Commissioner under sub-section (1) shall not enhance the rent of any such tenancy to an amount which would exceed one-half of the rent which would be payable for the land if it were held by a raiyat having a right of occupancy therein.

(3) The provisions of sections 28 to 30 shall be applicable to proceedings for the enhancement of the rent of a Mundari khunt-kattidari tenancy.

[¹]244. (1) When an arrear of rent accrues in respect of a Mundari khunt-kattidari tenancy for which a record-of-rights has been prepared under this Act or under any law in force before the commencement of this Act,

no suit shall be maintainable in any Court for the recovery of the arrear; but the landlord may apply in writing to the Deputy Commissioner to sign a certificate authorizing the recovery thereof, with simple interest not exceeding twelve and-a-half or (in the case of money recoverable under the Cess Act, 1880)[²] at twelve and-a-half *per centum per annum*, under the Bihar and Orissa Public Demands Recovery Act, of 1880. Ben. Act IX 1914.

(2) Every such application shall be signed and verified by the landlord making it, in the manner prescribed by rule 1 in Schedule II to the said Act, as amended for the time being by rules made under section 47 thereof; and shall be chargeable with a fee of the amount which would be payable under the Court-fees Act, 1870,[³] in respect of a plaint for the recovery of a sum of money equal to that stated in the application as being due. VII of 1870.

(3) Upon receiving any such application the Deputy Commissioner may, after making such inquiry and taking such evidence as he may consider necessary, and if he is satisfied that the arrear is due, sign a certificate, in the prescribed form, stating that the arrear is due; and shall include in the certificate the fee paid under sub-section (2) and shall cause the certificate to be filed in his office.

(4) The person in whose favour any such certificate is signed shall be deemed to be the certificate-holder for the amount mentioned in the certificate, and the person against whom the certificate is signed shall be deemed to be the certificate-debtor for the said amount; and all proceedings taken by the Certificate-officer for the recovery of such amount

[¹] This s. 244 was substituted for the original s. 244 by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 69, Sch. III, Pt. III. printed, post, p. 611.

[²] Printed in Vol. II of this Code.

[³] Printed in the General Acts, 1868-78, Ed. 1909, p. 102-146.

Recovery of
arrears of
rent under
the certificate
procedure
where there
is a record-
of-rights.

(Sec. 244.)

shall be taken at the instance of the first-mentioned person, and at his cost and on his responsibility, and not otherwise.

(5) The Bihar and Orissa Public Demands Recovery Act, 1914, and sections 181 to 207 of this Act, with such restrictions and modifications (if any) as may be prescribed, shall apply to the execution, and to all proceedings arising out of the execution, of certificates filed under subsection (3):

Provided as follows:—

- (a) a subject to the provisions of section 248, a certificate signed under this section may be enforced only by the attachment and sale of the movable property of the person against whom the certificate is made, or by the attachment and realization of rent or other debts due to him, or by execution against his person in the manner provided by Chapter XVI, or by any two or more of these processes; and
- (b) no objection by any third person to the attachment or sale of crops shall be entertained, except—
 - (i) an objection, by a mortgagee holding under a bhugut bandha mortgage, that the judgment-debtor has other movable property or assets, from which the sum due can be realized; or
 - (ii) an objection, by a lessee holding under a mukarari lease as described in section 240, clause (a), that the land in respect of which the arrear accrued is included in his lease, and that the judgment-debtor has other movable property or assets from which the sum due can be realized; or
 - (iii) an objection, by a cultivator, that he is in possession of the land in respect of which the arrear accrued, that the land is recorded in the record-of-rights as being in the possession of himself or of some person from whom he has lawfully acquired such possession, and that the judgment-debtor has other movable property or assets from which the sum due can be realized; or
 - (iv) an objection, by such third person, that the land on which such crops were or are standing is entered in the record-of-rights as being in the possession

(Secs. 245-248.)

of himself or of some person from whom he has lawfully acquired possession, and that such land does not form part of the tenancy in respect of which the certificate was signed.

(6) Notwithstanding anything hereinbefore contained, the Deputy Commissioner may, in any case, by written order setting forth the reasons therefor, refuse to sign a certificate as aforesaid, or stay for any specified period the execution of any certificate which has been signed.

(7) An appeal from any order made under sub-section (6) shall lie as provided in Chapter XVI.

245. If, in the course of any proceedings under section 244, any question of title is raised which could, in the opinion of the Deputy Commissioner, more properly be determined by a Civil Court, the Deputy Commissioner shall refer such question to the principal Civil Court in the district for determination.

246. (1) When an arrear of rent accrues in respect of a Mundari khunt-kattidari tenancy for which no record-of-rights has been prepared, the landlord may institute a suit for the recovery of the arrear.

(2) Subject to the provisions of section 248, a decree or order made in any such suit may be enforced only by the attachment and sale of the movable property of the defendant, or by the attachment and realization of rent or other debts due to him, or by execution against his person in the manner provided by Chapter XVI, or by any two or more of these processes.

247. Where a Mundari khunt-kattidari tenancy is held jointly by a group of khunt-kattidars,

and an objection to the making of a certificate under section 244, or to the execution thereof, or to the maintenance of a suit under section 246, is made on the ground that all the khunt-kattidars have not been made parties to the proceedings,

the objection shall not be entertained if it be shown that other khunt-kattidars could not be made parties without undue delay or expense.

248. Where a decree, or a certificate under [1] [the Bihar and Orissa Public Demands Recovery Act, 1914,] has been made against a Mundari khunt-kattidar for any money due to the Government or for rent due to a landlord, the Deputy Commissioner may attach the land occupied by him and make such arrangements as the Deputy Commissioner may consider suitable for liquidating the debt.

[1] The words and figures "the Bihar and Orissa Public Demands Recovery Act, 1914," in s. 248 were substituted for the original words and figures "the Public Demands Recovery Act, 1895," by the Bihar and Orissa Public Demands Recovery Act, 1914, s. 69, Sch. III, Pt. III, printed, *post*, p. 611.

Reference of
question of
title to Civil
Court.

Recovery of
arrear of
rent by suit
where there
is no record-
of-rights.

Joinder of
parties in
proceedings
under section
244 or 246.

Recovery of
money due to
the Govern-
ment or rent
due to a
landlord.

(Secs. 249-255.)

249. When a Mundari khunt-kattidar has paid the rent of his tenancy, including portions thereof due from his co-sharers or any of them, the said portions may, if the proportions due by such co-sharers are definitely stated in a record-of-rights prepared under this Act or under any law in force before the commencement of this Act, be recovered by him, with interest, under the procedure provided by section 244, as if they were an arrear of rent due to a landlord.

Recovery of contributions from co-sharer tenants.

250. All Mundari khunt-kattidari tenancies shall be so described in any record-of-rights prepared under Chapter XII.

Entry of Mundari khunt-kattidari tenancies in record-of-rights. Bar to suits under section 87.

251. No suit shall be entertained under section 87 for the decision of any dispute regarding any entry relating to a Mundari khunt-kattidari tenancy in a record-of-rights.

252. (1) At any time within three months from the date of the certificate of the final publication of the record-of-rights under this Act, or under any law in force before the commencement of this Act, a suit may be instituted before a Revenue-officer for the decision of any dispute regarding any entry of a Mundari khunt-kattidari tenancy or the incidents thereof in the record, or regarding any omission to enter such a tenancy or any incident thereof in the record; and the Revenue-officer shall hear and decide the dispute.

Decision of disputes regarding entries or omissions in record-of-rights.

(2) In all such suits the Revenue-officer shall, subject to any rules made in this behalf under section 264, adopt the procedure laid down in Chapter XVI for the trial of suits before the Deputy Commissioner.

253. An appeal shall lie, in the prescribed manner and to the prescribed officer, from any decision of a Revenue-officer under section 252.

Appeal against such decisions.

254. Whenever a suit instituted under section 252 has been finally decided, a note of the decision shall be made in the record-of-rights, as finally published, by the Revenue-officer referred to in that section; and such note shall be considered as part of the record.

Entry of decision in record-of-rights.

255. When an order has been issued under section 80 of this Act, or under section 101 of the Bengal Tenancy Act, 1885, in respect of any local area, estate, tenure or part thereof, no judgment, decree or order in any suit instituted thereafter shall be taken as evidence,

In preparing record-of-rights, judgments, etc., in suits not to be taken as evidence that tenancies are or are not Mundari khunt-kattidari tenancies.

in any inquiry made by a Revenue-officer engaged in the preparation of a record-of-rights for such area, estate, tenure or part, under Chapter XII of this Act, or under Chapter X of the said Bengal Tenancy Act, 1885.[']

respecting any claim that any tenancy within that area, estate, tenure or part is or is not a Mundari khunt-kattidari tenancy.

(Secs. 256-260.)

Record-of-rights to be conclusive evidence on the question whether a tenancy is a Mundari khunt-kattidari tenancy.

256. When a record-of-rights has been finally published under section 83 of this Act, or under sub-section (2) of section 103A of the Bengal Tenancy Act, 1885,^[1] or amended under section 254 of this Act,

VIII of 18

the entries therein relating to Mundari khunt-kattidari tenancies shall be conclusive evidence of the nature and incidents of such tenancies and of all particulars recorded in such entries;

and, if any tenancy in the area, estate or tenure for which the record-of-rights was prepared has not been recorded therein as a Mundari khunt-kattidari tenancy, no evidence shall be received in any Court to show that such tenancy is a Mundari khunt-kattidari tenancy.

CHAPTER XIX.

SUPPLEMENTAL PROVISIONS.

Joint-landlords.

Joint-landlords.

257. When two or more persons are joint-landlords, anything which a landlord is, under this Act, required or authorized to do must be done by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Bar to suits.

Bar to suits in certain cases.

258. Save as expressly provided in this Act, no suit shall be entertained in any Court to vary, modify or set aside, either directly or indirectly, any order or decree of any Deputy Commissioner or Revenue-officer in any suit or proceeding under section 29, section 32, section 35, section 42, section 46, sub-section (4), section 49, section 50, section 54, section 61, section 63, section 65, section 73, section 75, section 85, section 86, section 87, section 89, section 90 or section 91 (proviso), or under Chapter XIII, XIV, XV, XVI or XVIII, except on the ground of fraud or want of jurisdiction.

Process.

Mode of service.

259. Every notice, summons or other process under this Act required to be served on any person shall be served in the prescribed manner.

Authentication and payment of costs.

260. Every process issued by a Deputy Commissioner or Revenue-officer under this Act shall bear his seal and signature; and the cost of

(Secs. 261-264.)

serving the same shall be paid by such person and in such manner as may be prescribed.

Costs.

V of 1882.

261. The provisions of Chapter XVIII of the Code of Civil Procedure^[1] shall apply to all suits and applications under this Act.

Cost in suits and applications.

262. (1) A Revenue-officer or Deputy Commissioner may, subject to any directions given by the Local Government, require any plaintiff or applicant to deposit in advance the whole or any part of the estimated amount of the expenses to be incurred by the Government in any proceedings under this Act.

Deposit of costs of proceeding to be incurred by the Government.

(2) If the amount so deposited by any person exceeds the sum finally made payable by him as costs, the excess shall be refunded to him when the proceedings are completed.

Production of Witnesses and documents.

XIV of 1882

263. For the purposes of any inquiry under this Act, any Deputy Commissioner or Revenue-officer shall have power to summon and enforce the attendance of witnesses and compel the production of documents in the same manner as is provided in the case of a Court by the Code of Civil Procedure^[2].

Production of witnesses and documents.

Rules and Notifications.

264. (1) The Local Government may make rules^[3] to carry out the objects of this Act.

Power to make rules to carry out objects of Act.

(2) In particular, and without prejudice to the generality of subsection (1), the Local Government may make rules—

- (a) to prescribe particulars to be specified, in pursuance of clause (a) of section 28, in applications for the enhancement of the rent of occupancy holdings;
- (ii) to limit the enhancement of the rent of occupancy holdings under section 29;
- (iii) to prescribe particulars to be specified, in pursuance of clause (j) of section 31, in applications for increase of rent

[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (Act 5 of 1908) and the provisions thereof shall be taken to be made to s. 35, and Order XX, s. 158 thereof, in the General Acts, 1904-08.

[2] For rules made under this section, see the Bihar and Orissa Statutory Rules and Orders, 1918, Vol. I, Pt. VI.

is to Order XVI in Sch. I to the latter Act.

(Sec. 264.)

in respect of increase in the area of land held by occupancy-raiyats;

- (iv) to prescribe particulars to be specified, in pursuance of clause (h) of section 34, in applications for the reduction of rent paid by occupancy-raiyats;
- (v) to prescribe the manner in which the possession of land should be given under section 46, sub-section (4), section 50, sub-section (2), section 71 or section 73, sub-section (3);
- (vi) to prescribe the manner in which landlords shall send notices to the Deputy Commissioner under section 73, sub-section (2);
- (vii) to prescribe the manner in which rents shall be settled under section 85;
- (viii) to prescribe the officer to whom and the manner in which appeals shall lie from orders or decisions passed by Revenue-officers under section 61, section 85, section 87, section 89, Chapter XIII, Chapter XIV, Chapter XV or section 252;
- (ix) to regulate the transfer of cases to Civil Courts under the first proviso to section 87;
- (x) to prescribe the manner in which records-of-rights shall be revised in pursuance of a direction given under section 98;
- (xi) to declare the restrictions or modifications (if any) subject to which the provisions of Chapter XII shall apply to the revision of records-of-rights or the settlement of rents in pursuance of a direction given under section 98;
- (xii) to prescribe particulars to be contained in a record prepared under section 106;
- (xiii) to prescribe the form of statements to be prepared under section 111, clause (1);
- (xiv) to prescribe the manner in which copies of entries in records prepared under Chapter XV shall be served under section 129;
- (xv) to regulate the exercise of the right conferred by section 140 to bring collective suits or make collective applications;
- (xvi) to prescribe the Court by which decrees or orders passed by a Deputy Commissioner under this Act may be executed;
- (xvii) to prescribe the form of applications for the execution of decrees or orders passed by a Deputy Commissioner under this Act;

(Sec. 265.)

- (xviii) to prescribe the manner of executing decrees or orders referred to in section 195;
- (xix) to prescribe the manner of dealing with sale-proceeds under section 205, sub-section (2);
- (xx) to prescribe the manner of service of notices, summonses and other processes; and of publication of notices issued under this Act;
- (xxi) to declare by what person and in what manner the cost of serving processes issued by a Deputy Commissioner or a Revenue-officer under this Act shall be paid;
- (xxii) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may, by such rules, confer upon any such officer—
 - (a) any power exercised by a Civil Court in the trial of suits;
 - (b) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875;[*] and
 - (c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil;
- (xxiii) to prescribe the forms to be used under this Act;
- (xxiv) to prescribe the procedure to be followed and the information to be given by any party or applicant in any proceeding under this Act.

265. (1) The Local Government may, with the previous sanction of the Government of India, make rules[²] for regulating the procedure of the Deputy Commissioner in matters under this Act for which a procedure is not provided hereby; and may, by any such rule, direct that any provisions of the Code of Civil Procedure[³] shall apply, with or without modification, to all or any classes of cases before the Deputy Commissioner.

[¹] Printed in Vol. II of this Code.

[²] For rules made under this section, see the Bihar and Orissa Statutory Rules and Orders, 1818, Vol. I, Pt VI.

[³] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to the latter Act, see s. 158 thereof, in the General Acts, 1904-08, Ed. 1909, p. 184.

(Secs. 266-268.)

(2) When any provision of the said Code is applied by such rules, the rules may further declare that any provision of this Act which is superseded by, or is inconsistent with, any provision so applied shall be deemed to be repealed.

(3) Until rules are made under sub-section (1), and subject to those rules when made and to the other provisions of this Act, the provisions of the Code of Civil Procedure^[1] relating to—

- (a) the substitution and addition of parties,
- (b) the amendment of plaints,
- (c) the production of documents,
- (d) the attendance remuneration, punishment and examination of witnesses,
- (e) the amendment of decrees,
- (f) commissions to examine witnesses,
- (g) commissions for local investigations,
- (h) attachment before judgment,
- (j) arbitration, and
- (k) review of judgment

shall, so far as may be, and in so far as they are not inconsistent with this Act, apply to all suits, appeals and proceedings before the Deputy Commissioner under this Act, and to all appeals from decisions passed in such suits or proceedings.

266. (1) All powers conferred by this Act for making rules are subject to the condition that the rules be made after previous publication.

(2) Sub-section (1) shall not apply to any rules made and published in the Calcutta Gazette within a period of two months from the commencement of this Act; but all rules so made and published shall be re-issued, after previous publication, and with such amendments (if any) as the Local Government may consider necessary, within a period of one year from such commencement.

267. All rules made, and notifications issued, under this Act shall be published in the Calcutta Gazette, and on such publication shall have effect as if enacted in this Act.

Recovery of Dues.

268. (1) Costs and interest awarded under this Act in rent suits, and damages awarded under section 175, shall be recoverable as if they were arrears of rent.

^[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to the latter Act, see s. 158 thereof, in the General Acts, 1904-08, Ed. 1909, p. 184.

Publication
of rules in
draft.

Publication
and effect of
rules and
notifications.

Recovery of
dues.

(Secs. 269-271. Schedule A.)

(2) All costs, interest and damages not referred to in sub-section (1), and all compensation, fines and penalties, awarded or imposed under this Act, shall be recoverable in the manner provided in Chapter XVI for the recovery of money (not being arrears of rent) due under decree.

Powers.

269. A Revenue-officer may at any time transfer any pending suit, application or proceeding under this Act from the file of any Revenue-officer acting under this Act to the file of any other Revenue-officer so acting who is duly authorized to entertain and decide such suit, application or proceeding.

Transfer of cases from one Revenue-officer to another.

270. In the performance of their duties and the exercise of their powers under this Act, Deputy Commissioners shall be subject to the general direction and control of the Commissioner and the Board, and Deputy Collectors exercising functions of the Deputy Commissioner shall also be subject to the direction and control of the Deputy Commissioner.

Control over Deputy Commissioners and Deputy Collectors.

Saving of Special Enactments.

271. Nothing in this Act shall affect—

- (a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act; or
- (b) any other special or local law not repealed, either expressly or local law not repealed, either expressly or by necessary implication, by this Act.

Saving of special enactments.

SCHEDULE A.

ACTS AND NOTIFICATION REPEALED IN THE CHOTA NAGPUR DIVISION,
EXCEPT THE DISTRICT OF MANBHUM.

[See section 2 (1).]

1	2
No and year.	Short title
<i>Acts of the Bengal Council.</i>	
I of 1879	
IV of 1897	
V of 1903	
V of 1905	
VIII of 1879	

(Schedule B.)

Notification.

Notification No. 1379L.R., dated the 5th March, 1908, published in the Calcutta Gazette of the 11th idem, Part I, page 631, and in the Gazette of India of the 21st idem, Part I, page 214.

SCHEDULE B.

ACTS PROSPECTIVELY REPEALED IN THE DISTRICT OF MANBHUM.

[See section 2 (2).]

1	2
No. and year.	Short title.

Act of the Governor General of India in Council.

X of 1859 . . . The Bengal Rent Act, 1859.

Acts of the Bengal Council.

VI of 1862 . . . The Bengal Rent Act, 1862.

IV of 1867 . . . The Bengal Rent (Appeals) Act, 1867.

VIII of 1879 . . . The Bengal Rent Settlement Act, 1879.

BENGAL ACT 2 OF 1909.

[THE BENGAL COURT OF WARDS (AMENDMENT) ACT, 1909.][¹]

(17th February, 1909.)

An Act further to amend the Court of Wards Act, 1879.[²]

Ben. Act 9 of 1879. Whereas it is expedient further to amend the Court of Wards Act, 1879; [²] It is hereby enacted as follows:—

1. This Act may be called the Bengal Court of Wards (Amendment) Act, 1909. Short title.

2. At the end of section 50 of the Court of Wards Act, 1879; [²] the following shall be added, namely:— Amendment of Bengal Act 9 of 1879, section 50.

“or mortgages on immovable property.”

[¹] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1908, Pt. IV, p. 247; for Proceedings in Council, see *ibid*, 1908, Pt. IVA, pp. 252, 274; see *ibid*, 1909, Pt. IVA, p. 5.

LOCAL EXTENT.—Since this Act has no local extent clause, it must be taken originally to have extended to those territories, at the time comprised in the province of Bengal, in which the Court of Wards Act, 1879 (Ben. Act 9 of 1879), which this Act amends, was in force. It is, therefore, in force by its own operation in Bihar and Orissa and in Western Bengal. As the Bengal Court of Wards Act, 1879, applies to the Sonthal Parganas, this Act must be taken to apply to that district. But its application is barred in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I, p. 864.

[²] Printed in Vol. II of this Code.

BENGAL ACT 3 OF 1909.

[THE CHOTA NAGPUR ENCUMBERED ESTATES (AMENDMENT) ACT, 1909]

CONTENTS.

SECTION.

1. Short title.
2. Amendment of section 2 of Act VI of 1876.
3. New section 2A—
 - 2A. Power of Deputy Commissioner to order production of statement and documents
4. Amendment of section 3.
5. Amendment of section 4.
6. Amendment of section 5.
7. Addition to section 7.
8. Amendment of section 9.
9. Amendment of section 10.
10. New section 10A—
 - 10A. Review by Commissioner.
11. Amendment of section 12.
12. New section 12A—
 - 12A. Continuance of disabilities after restoration of property to owner.
13. New section 14A—
 - 14A. Power to order production of title to tenures and under-tenures.
14. New sections 18, 18A and 18B—
 18. Power of Manager to raise money by mortgage, sale or loan.
 - 18A. Freedom from obligation to inquire into necessity for, or application of, money.
 - 18B. Power of Manager to contract and take action for the benefit of the property.
15. New sections 19A and 19B—
 - 19A. Power to make orders as to education of holder's children. Penalty for disobedience.
 - 19B. Recovery of fines
16. New sections 21A and 21B—
 - 21A. Control by Board of Revenue.
 - 21B. Suits and appeals by and against holder, during management.
17. Amendment of section 23.
18. Repeal of section 24.



BENGAL ACT 3 OF 1909.

[THE CHOTA NAGPUR ENCUMBERED ESTATES (AMENDMENT) ACT, 1909.][¹]

(24th March, 1909.)

An Act further to amend the Chota Nagpur Encumbered Estates Act, 1876.[²]

WHEREAS it is expedient further to amend the Chota Nagpur Encumbered Estates Act, 1876;[²]

And whereas the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892,[³] to the passing of this Act;

It is hereby enacted as follows:—

1. This Act may be called the Chota Nagpur Encumbered Estates Short title. (Amendment) Act, 1909.

2. (1) In section 2 of the Chota Nagpur Encumbered Estates Act, 1876,[²] as amended by the Chota Nagpur Encumbered Estates (Amendment) Act, 1884[²] (hereinafter cited as "the said Act"), for the words from "or, when any such property" to the words "such property is situate" the following shall be substituted, namely:—

"or the Deputy Commissioner within whose jurisdiction any such property belonging to such holder is situate, when—

- (i) attachment has been made of, or a proclamation has been issued for the sale of, such property or any portion thereof, in execution of a decree or order of a Civil Court or a Revenue Court, or
- (ii) such Deputy Commissioner is satisfied, after making such inquiry as he may think fit, and after considering and placing on record all representations (if any) made by such holder, that such holder has entered upon a course of wasteful extravagance likely to dissipate his property."

(Sec. 3.)

(2) After the words "consent of the Lieutenant-Governor of Bengal," in the same section, the words "(to be obtained through the Board of Revenue)" shall be inserted.

(3) After the words "during the continuance of such management," in the same section, the following shall be inserted, namely:—

"Provided as follows—

First, if any holder referred to in clause (ii) of this section petitions the Commissioner, while the inquiry referred to in that clause is being made, to postpone, until the petitioner has been heard, the passing of orders on any request that the Deputy Commissioner may make for applying the provisions of this Act to his case,

and if a request as aforesaid be made by the Deputy Commissioner, the Commissioner shall appoint a day for hearing the petitioner; and if he appears, either in person or by agent, on the day so appointed and on the subsequent day (if any) to which the hearing is adjourned, the Commissioner shall not pass any order in the matter until he has been heard;

Secondly, if any holder referred to in clause (ii) of this section petitions the Board of Revenue, while any proceedings are pending before the Commissioner under proviso *First*, to postpone, until the petitioner has been heard, the passing of orders on any request that the Commissioner may make for the consent of the Lieutenant-Governor to the application of the provisions of this Act to his case,

and if a request as aforesaid be made by the Commissioner, the Board of Revenue shall appoint a day for hearing the petitioner; and if he appears, either in person or by agent, on the day so appointed, and on the subsequent day (if any) to which the hearing is adjourned, the Board shall not pass any order in the matter until he has been heard;

Thirdly, the consent of the Lieutenant-Governor shall not be given in the case of any holder referred to in clause (ii) of this section unless either—

such holder belongs to a family of political or social importance, or the Lieutenant-Governor is satisfied that it is desirable, in the interests of the tenants of such holder, that such consent should be given."

3. After section 2 of the said Act the following shall be inserted, namely:—

(Secs. 4-6.)

"2A. (1) For the purpose of making an application under section 2 in the case of any holder, the Deputy Commissioner may, by written order, require the said holder to produce before him, on a date to be stated in such order,—

Power of Deputy Commissioner to order production of statement and documents.

(i) a statement in writing, showing—

- (a) all debts and liabilities to which the said holder is subject,
- (b) the amount, kind and particulars of his property, and the annual value of any such property not consisting of money,
- (c) the names and residences of his creditors, so far as they are known to, or can be ascertained by, him, and
- (d) such other information as the Deputy Commissioner may, by his order, require, and

(ii) such documents relating to his estate, which are in the possession, power or control of the holder, as the Deputy Commissioner may deem necessary.

(2) The Deputy Commissioner may, by a like order, call upon any person in whose possession, power or control he has reason to believe there is any document relating to a debt or liability to which the holder is subject, to submit the same to him for the aforesaid purpose."

4. (1) In clause *First* of section 3 of the said Act, after the words "British India" the words "or in any Revenue Court in Bengal" shall be inserted. Amendment of section 3.

(2) In clause *Secondly* of the same section, after the words "British India" the words "or any Revenue Court in Bengal" shall be inserted.

5. (1) In section 4 of the said Act, after clause *thirdly*, the following shall be inserted, namely:— Amendment of section 4.

"*fourthly*, all sums due in re-payment of loans effected under the power conferred by clause (c) of section 18," and clause *fourthly* shall be re-numbered clause *fifthly*.

(2) In the same section, the words from "and also in or towards the re-payment" to "by the Manager under this Act," are hereby repealed.

6. In section 5 of the said Act, for the words "Urdu and Hindi" the words "and the language of the district or estate" shall be substituted. Amendment of section 6.

(Secs. 7-10.)

Addition to section 7.

7. To section 7 of the said Act the following shall be added, namely:—

Barring of debts incurred after making petition for postponement of orders for application of Act.

“If a holder of property has petitioned the Commissioner, under the first proviso in section 2 or the first proviso to section 12A, sub-section (5), to postpone the passing of orders on any request that the Deputy Commissioner might make for applying or re-applying the provisions of this Act to his case,

every debt or liability which such holder has, after the date on which the said request was made, incurred, or charged upon his property, shall be barred, with the exception of—

- (a) debts due or liabilities incurred to the Government,
- (b) debts or liabilities which the Deputy Commissioner is satisfied had necessarily to be incurred for the maintenance of such holder or his family,
- (c) in the case of under-tenures, the rent due to the superior landlord, and
- (d) interest due in respect of debts or liabilities incurred before the said date.”

Amendment of section 9.

8. (1) In section 9 of the said Act, after the word “lease”—

- (a) in the first place where it occurs, the words “or rent-free or maintenance grant,” and
- (b) in all other places where it occurs, the words “or grant” shall, respectively, be inserted.

(2) To the said section the following shall be added, namely:—

“Provided that no rent-free or maintenance grant shall be set aside or cancelled without the previous sanction of the Commissioner, which may be accorded only if he is satisfied that the grant was not made in good faith.”

Amendment of section 10.

9. In section 10 of the said Act,—

- (a) after the figure “9” the words and figure “except a refusal under the proviso to section 9” shall be inserted; and
- (b) for the words “shall be final,” in both places in which they occur, the words, figures and letters “shall, subject to the provisions of section 10A and 21A, be final,” shall be substituted.

New Section 10A.

10. After section 10 of the said Act the following shall be inserted, namely:—

(Secs. 11-12.)

"10A. The Commissioner may of his own motion review any order or proceeding under section 6, 7, 8, 9 or 10, and may revise, modify or reverse the same." Review by
Commissioner.

11. (1) In section 12 of the said Act, for the words "received from the Government under section eighteen" the words, brackets, letter and figures "effected under the power conferred by clause (c) of section 18," shall be substituted. Amendment
of section 12.

(2) In the said section 12, after the words "powers hereinafter contained" the following shall be inserted, namely:—

"Provided that, where a fresh order has been made under section 2, in pursuance of section 12A, sub-section (5), re-appointing a Manager and vesting in him the management of the whole or any portion of the property of any holder, such property shall not be restored to such holder, but shall be retained by the Manager for restoration to the heir of such holder in due course."

12. After section 12 of the said Act the following shall be inserted, namely:— New section
12A.

"12A. (1) When the possession and enjoyment of property is restored, under the circumstances mentioned in the first or the third clause of section 12, to the person who was the holder of such property when the application under section 2 was made, such person shall not be competent, without the previous sanction of the Commissioner,— Continuance
of disabilities
after restoration
of property to
owner.

(a) to alienate such property, or any part thereof, in any way, or

(b) to create any charge thereon extending beyond his lifetime.

(2) If the Commissioner refuses to sanction any such alienation or charge, an appeal shall lie to the Board of Revenue, whose decision shall be final.

(3) Every alienation and charge made or attempted in contravention of sub-section (1) shall be void.

(4) The Deputy Commissioner may at any time, either of his own motion or on the application of any person interested, make an inquiry to ascertain whether any holder of property who is referred to in sub-section (1) has made or attempted to make any alienation or charge in contravention of that sub-section, and shall consider and place on record all representations (if any) made by such holder and by the person in whose favour such alienation or charge is alleged to have been made.

(5) If the Deputy Commissioner is satisfied, after making such an inquiry that such holder has made or attempted to make any alienation or charge in contravention of sub-section (1), he may make a report to the

(Sec. 12.)

Commissioner, setting forth the result of the inquiry and showing all debts and liabilities to which such holder is subject, and requesting that the provisions of this Act be re-applied to his case; and the Commissioner may, with the previous consent of the Lieutenant-Governor (to be obtained through the Board of Revenue), publish a fresh order under section 2, re-appointing a Manager and vesting in him the management of the whole or any portion of the property of such holder:

Provided as follows—

First, if the said holder petitions the Commissioner, while the said inquiry is being made, to postpone, until the petitioner has been heard, the passing of orders on any request that the Deputy Commissioner may make for re-applying the provisions of this Act to his case,

and if a request as aforesaid be made by the Deputy Commissioner,

the Commissioner shall appoint a day for hearing the petitioner; and if he appears, either in person or by agent, on the day so appointed, and on the subsequent day (if any) to which the hearing is adjourned, the Commissioner shall not pass any order in the matter until he has been heard;

Secondly, if the said holder petitions the Board of Revenue, while any proceedings are pending before the Commissioner under proviso *First*, to postpone, until the petitioner has been heard, the passing of orders on any request that the Commissioner may make for the consent of the Lieutenant-Governor to the re-application of the provisions of this Act to his case,

and if a request as aforesaid be made by the Commissioner,

the Board of Revenue shall appoint a day for hearing the petitioner; and if he appears, either in person or by agent, on the day so appointed, and on the subsequent day (if any) to which the hearing is adjourned, the Board shall not pass any order in the matter until he has been heard.

(6) No suit shall be brought to charge any person to whom property is restored under the circumstances mentioned in the first or the third clause of section 12—

(i) upon any promise, made after such restoration, to pay any debt contracted while the management of the property was vested in the Manager, or

(ii) upon any ratification, made after such restoration, of any promise or contract made while the management of the property was vested in the Manager,

whether or not there be any new consideration for such promise or ratification."

(Secs. 13-14.)

13. After section 14 of the said Act the following shall be inserted, namely:—

New section 14A.

“14A. (1) The Manager may order all holder of tenures and under-tenures on property under his management to produce their evidence of title to such tenures and under-tenures.

Power to order production of title to tenures and under-tenures.

(2) Any person who refuses to comply with an order of the Manager under sub-section (1) shall be liable, by order of the Deputy Commissioner, to a fine not exceeding five hundred rupees:

Provided that the Deputy Commissioner shall, before passing such order, hear any explanation or objection that may be made by such person.”

14. For section 18 of the said Act the following shall be substituted, namely:—

New sections 18, 18A and 18B.

“18. After a scheme has been approved by the Commissioner under section 11, the Manager shall, subject to the sanction of the Commissioner, have power,—

Power of Manager to raise money by mortgage, sale or loan.

(a) to demise by way of mortgage the whole or any part of such property for a term not exceeding twenty years from the date of publication of the order under section 2, or

(b) to sell by public auction or by private contract, and upon such terms as the Manager thinks fit, such portion of such property as may appear expedient,

for the purpose of raising any money which may be required for the settlement of the debts and liabilities to which the holder of the property is subject, or with which such property or any part thereof is charged, or,

(c) to borrow money, at such rate of interest as appears reasonable to the Board of Revenue,

for the aforesaid purpose or for the purpose of meeting the costs of such repairs and improvements of the property as appear necessary to the Manager and are approved by the Commissioner.

“18A. (1) A mortgagee advancing money upon any mortgage made under section 18 shall not be bound to see that such money is wanted, or that no more than is wanted is raised.

Freedom from obligation to inquire into necessity for, or application of, money.

(2) The receipt of the Manager for any moneys paid to him as such shall discharge the person paying the same therefrom and from being concerned to see the application thereof.

“18B. Subject to the sanction of the Commissioner, the Manager shall have power to enter upon any contract or to execute or relinquish

Power of Manager to contract and

350 *The Chota Nagpur Encumbered Estates (Amendment) [Ben. Act
Act, 1909.*

(Secs. 15-16.)

take action
for the benefit
of the pro-
perty.

any lease or counterpart of a lease, or to take any action not otherwise provided for in this Act which in his opinion is necessary for the proper care and management of the property."

New sections
19A and 19B.

15. After section 19 of the said Act the following shall be inserted, namely:—

Power to
make orders
as to educa-
tion of
holder's
children.
Penalty for
disobedience.

" 19A. (1) The Commissioner may make such orders as to him may seem fit in respect of the education of any child of a holder whose property is being managed under the provisions of this Act otherwise than on the application of the Deputy Commissioner.

(2) Any person who disobeys any order made by the Commissioner under sub-section (1) shall be liable, by order of the Deputy Commissioner, to a fine not exceeding five hundred rupees:

Provided that the Deputy Commissioner shall, before passing such order, hear any explanation or objection that may be made by such person.

Recovery of
fines.

" 19B. Any fine imposed by the Deputy Commissioner under section 14A or section 19A shall be recoverable as an arrear of land-revenue."

New sections
21A and 21B.

16. After section 21 of the said Act the following shall be inserted, namely:—

Control by
Board of
Revenue.

" 21A. All orders or proceedings of the Commissioner and of the Deputy Commissioner under this Act shall be subject to the supervision and control of the Board of Revenue; and the Board of Revenue may, if it thinks fit, revise, modify or reverse any such order or proceeding.

Suits and
appeals by
and against
holder,
during

" 21B. During the period of management,—

(1) every suit or appeal by the holder shall be instituted in his name by the Manager;

(2) in every pending suit or appeal in which the holder is plaintiff or defendant, the Manager shall be named as the representative of the holder for the purposes of the suit or appeal; and no application in any such suit or appeal shall be made to the Court on behalf of the holder except by the Manager;

(3) no person other than the Manager shall be ordered to sue or be sued as next friend or guardian, or be named as guardian, of the holder, for a pending suit; and

(4) the Court, upon application by the Manager or by any party to a suit, may order that the plaint or memorandum of appeal be amended so as to conform with the requirements of clause (1), or that the Manager be named as the representative of the holder as required by clause (2), of this section."

(Secs. 17-18.)

17. In section 23 of the said Act,—

Amendment
of section 23.

(a) to the words “ nothing in this Act ” the words, figure and letter “ subject to the provisions of section 21B,” shall be prefixed; and

(b) the words “ but to all such suits the Manager of such property shall be made a party ” shall be omitted.

18. Section 24 of the said Act is hereby repealed.

Repeal of
section 24.

BENGAL ACT 2 OF 1910.

[THE BENGAL MUNICIPAL (AMENDMENT AND VALIDATION) ACT, 1910.][¹]

(23rd March, 1910.)

An Act to declare the meaning of certain words in clause (b) of section 66 of the Bengal Municipal Act, 1884.[²]

Ben. Act 3
of 1884.

Whereas certain officers were directed by the Lieutenant-Governor of Bengal, by orders issued under clause (b) of section 66 of the Bengal Municipal Act, 1884,[²] to exercise and perform the powers and duties of the Commissioners of certain Municipalities who had been superseded by orders issued under section 65 of that Act;[³]

And whereas the said officers, in exercise of the power conferred by section 9 of the said Act[³] on Commissioners at a meeting, recommended alterations in the numbers of the Commissioners of the said Municipalities;

And whereas the Lieutenant-Governor of Bengal thereupon, by notifications issued under sections 9 and 9A of the said Act,[³] altered the numbers of the Commissioners of the said Municipalities, with effect from the expiration of the period for which the former Commissioners were superseded;

And whereas doubts have been raised as to whether clause (b) of the said section 66 confers upon the persons appointed thereunder any of the powers of the Commissioners which are expressed by the said Act[³] to be exercisable only at a meeting of the Commissioners;

And whereas it is expedient to remove such doubts, by declaring that the said clause (b) refers to powers exercisable at a meeting of the Commissioners;

And whereas it is also expedient to give retrospective effect to such declaration, in order to validate all action taken by bodies of Municipal Commissioners constituted in pursuance of orders issued under the said section 9 on the recommendation of the officers aforesaid;

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1910, Pt IV
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(Secs. 1-3.)

[And whereas, in the case of one of the Municipalities hereinbefore referred to, namely, the Santipur Municipality, the number of the Commissioners was altered by a Notification No. 1726, dated the 2nd September, 1904, issued under section 9 of the said Act, instead of by notifications issued under both section 9 and section 9A;

And whereas it is expedient to validate the said notification;]

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bengal Municipal (Amendment and Validation) Act, 1910.

Meaning of
clause (b) of
section 66 of
Bengal Act 3
of 1884.

2. The expression “all the powers and duties of the Commissioners” in clause (b) of section 66 of the Bengal Municipal Act, 1884,^[1] shall include, and shall be deemed always to have included, powers and duties which may be exercised and performed at a meeting of the Commissioners, as well as powers and duties which may be exercised and performed otherwise than at such a meeting.

Validation of
notification
altering the
number of
the Commis-
sioners of the
Santipur
Municipality.

[3. *The Notification No. 1726, dated the 2nd September, 1904, which was framed under section 9 of the said Act^[2] and published at page 202 of Part IB of the Calcutta Gazette of the 7th day of September, 1904, shall be deemed to be as valid as if it had been rightly framed and followed in due course by a notification framed under section 9A of that Act;^[2] and the number of the Commissioners of the Santipur Municipality, in the district of Nadia, shall accordingly be deemed to have been lawfully fixed at nine, with effect from the 2nd day of September, 1904, and shall remain at nine unless and until the number be altered hereafter by notifications published under sections 9 and 9A of the said Act.]*

[1] Printed in Vol. II of this Code.

[2] The Bengal Municipal Act, 1884. It is printed in Vol. II of this Code.

BENGAL ACT 4 of 1910.

[THE BENGAL CESS (AMENDMENT) ACT, 1910.]

CONTENTS.

SECTION.

- 1 Short title
- 2 Amendment of section 4 of Bengal Act 9 of 1880.
- 3 Amendment of section 12
- 4 Amendment of section 14.
- 5 Amendment of sections 12, 14, 15, 16, 36, 54 and 57.
- 6 New sections 22 and 23.
- 7 Amendment of section 37
- 8 New Chapter IIA
- 9 Amendment of section 41.
- 10 Amendment of section 44
- 11 Amendment of section 46 (2)
- 12 Amendment of section 49
- 13 New section 52A.
- 14 Amendment of section 54
- 15 New section 72A.
- 16 New section 91A
- 17 Partial repeal of section 94
- 18 Amendment of section 102
- 19 Amendment of section 104
- 20 Amendment of section 105
- 21 Amendment of sections 112 and 113.

BENGAL ACT 4 OF 1910.

[THE BENGAL CESS (AMENDMENT) ACT, 1910.][¹]

(25th May, 1910.)

An Act further to amend the Cess Act, 1880.[²]

Whereas it is expedient further to amend the Cess Act, 1880,[²] in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Cess (Amendment) Act, 1910. Short title.
2. (1) The words “revenue or,” in both places in which they occur in the definition of “annual value of any land, estate or tenure” in section 4 of the Cess Act, 1880,[²] are hereby repealed. Amendment of section 4 of Bengal Act 9 of 1880.
- (2) To the said definition the following shall be added, namely:—
[Printed in Vol. II of this Code.]
- (3) After the definition of “the Collector of the district,” in the same section, the following definition shall be inserted, namely:—
[Printed in Vol. II of this Code.]
3. In section 12 of the Cess Act, 1880,[²] after the words “this section” the words, figures and letter “or in Chapter IIA” shall be inserted. Amendment of section 12.
4. In section 14 of the said Act,[³] after the words “has ordered” the words and figures “under section 12” shall be inserted. Amendment of section 14.
5. (1) In sections 12, 14, 15, 16, 36, 54 and 57 of the said Act,[³] for the words “Lieutenant-Governor,” wherever they occur, the words “Board of Revenue” shall be substituted. Amendment of sections 12, 14, 15, 16, 36, 54 and 57.
- (2) In sections 12 and 15 of the said Act,[³] for the word “he,” wherever it occurs, the word “they” shall be substituted.
6. For sections 22 and 23 of the said Act,[³] the following shall be substituted, namely:— New sections 22 and 23.

[¹] LEGISLATIVE PAPERS—For Statement of Objects and Reasons, see Calcutta Gazette, 1910, Pt. IV, p. 6; for Proceedings in Council, see *ibid*, Pt. IVA, pp. 5, 41 and 440 to 447.

LOCAL EXTENT.—Since this Act has no local extent clause, it must be taken originally to have extended to those territories, at the time comprised in the Province of Bengal, in which the Cess Act, 1880 (Ben. Act 9 of 1880), which this Act amends, was in force. It, therefore, applies to the province of Bihar and Orissa. As the Bengal Cess Act, 1880, applies to the Sonthal Parganas, this Act must be taken to apply that district. But it applies to the Angul Parganas, by the Angul Laws Regulation, 1913 (3 of 1913),

(Secs. 7-16.)

22, 23. [Printed in Vol. II of this Code.]

Amendment
of section 37.**7.** In section 37 of the said Act,^[1] for the words "Boards of Revenue" the word "Commissioner" shall be substituted.New Chapter
IIA.**8.** After section 37 of the said Act,^[1] the following shall be inserted, namely:—

Chapter IIA.—37A to 37 I. [Printed in Vol. II of this Code.]

Amendment
of section 41.**9.** To section 41 of the Cess Act, 1880,^[2] the following shall be added, namely:—Ben. Act 9
of 1880.

[Printed in Vol. II of this Code.]

Amendment
of section 44.**10.** After sub-section (4) of section 44 of the Cess Act, 1880,^[2] the following shall be inserted, namely:—Ben. Act 9
of 1880.

(4a), (4b). [Printed in Vol. II of this Code.]

Amendment
of section 46
(2).**11.** In sub-section (2) of section 46 of the Cess Act, 1880,^[2] for the words from "and the Board of Revenue may" to the end of the sub-section, the following shall be substituted, namely:—Ben. Act 9
of 1880.

"and the Collector, if he becomes aware that any separate account opened under sub-section (1) does not represent existing facts, may, after service of a notice on the recorded proprietor or manager, and after hearing any objection which may be preferred within six weeks of such service, close the account."

Amendment
of section 49.**12.** In section 49 of the said Act,^[1] for the words "fifteen days" the words "six weeks" shall be substituted.New section
52A.**13.** After section 52 of the said Act,^[1] the following shall be inserted, namely:—

52A. [Printed in Vol. II of this Code.]

Amendment
of section 54.**14.** For clause (1) of the concluding paragraph of section 54 of the said Act,^[1] the following shall be substituted, namely:—

"(1) a statement of the quantity, or a description, of the land, as entered in the Collector's valuation-roll."

New section
72A.**15.** After section 72 of the said Act,^[1] the following shall be inserted, namely:—

72A. [Printed in Vol. II of this Code.]

New section
91A.**16.** After section 91 of the said Act,^[1] the following shall be inserted, namely:—

91A. [Printed in Vol. II of this Code.]

^[1] The Cess Act, 1880. It is printed in Vol. II of this Code.^[2] Printed in Vol. II of this Code.

(Secs. 17-21.)

17. In section 94 of the said Act,[¹] the words from "And, if the person so prosecuted" to the end of the section are hereby repealed. Partial repeal
of section 94.

18. In section 102 of the said Act,[¹] after the words and figures "section 78 and," the words, figures and letter "subject to anything con-
tained in Chapter IIA" shall be inserted. Amendment
of section
102.

19. In section 104 of the said Act,[¹] after the figures "26" the figures "46 (2)" shall be inserted. Amendment
of section
104.

20. For section 105 of the said Act,[¹] the following shall be substituted, namely:— Amendment
of section
105.

105. [Printed in Vol. II of this Code.]

21. In sections 112 and 113 of the said Act,[¹] for the words "Lieutenant-Governor" the word "Commissioner" shall be substituted. Amendment
of sections
112 and 113.

[¹] The Cess Act, 1880. It is printed in Vol. II of this Code.

BENGAL ACT 2 of 1911.

[THE BENGAL VACCINATION (AMENDMENT) ACT, 1911.]

CONTENTS.

SECTION.

1. Short title and local extent.
2. Power to extend Act.
3. Power to suspend Act.
4. Amendment of section 2 of Bengal Act 5 of 1880.
5. Repeal of portions of section 2.
6. Amendment of section 3.
7. Amendment of section 4.
8. Amendment of section 5.
9. Amendment of section 6.
10. Amendment of section 7.
11. Amendment of section 8.
- 12.
- 13.
- 14.
15. Amendment of section 19.
16. Amendment of section 28.
17. Amendment of Schedule A.
18. Amendment of Schedule B.
19. Amendment of Schedule C.
20. Amendment of Schedule E.

BENGAL ACT 2 OF 1911.

[THE BENGAL VACCINATION (AMENDMENT) ACT, 1911.][¹]

(22nd March, 1911.)

**An Act further to amend the Bengal Vaccination Act,
1880.**[²]

Ben. Act 5 of
1880.

WHEREAS it is expedient further to amend the Bengal Vaccination Act, 1880,[²] in manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Vaccination (Amendment) Act, 1911; and

short title
and local
extent.

(2) It applies in the first instance only to—

Ben. Act 5 of
1880.

(a) Calcutta, as defined in clause (7) of section 3 of the Calcutta Municipal Act, 1899,[³]

(b) the port of Calcutta, and

(c) the Cossipore-Chitpur, Garden Reach, Howrah, Maniktala, South Suburban and Tollyganj Municipalities.

2. (1) The Local Government may, by notification published in the Calcutta Gazette, declare its intention to extend this Act or any portion thereof to any town or selected area not mentioned in section 1, sub-section (2).

Power to
extend Act.

(2) Any inhabitant of any such town or area who objects to such extension may, within a period of six weeks from such publication, send his objection in writing to a Secretary to the Government of Bengal; and the Local Government shall consider all objections so sent.

(3) After the expiration of the said period, the Local Government, if no objections have been so sent, or if it considers that the objections so

[¹] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1910, Pt. IV, pp. 136, 137; for Proceedings in Council, see *ibid*, Pt. IVA, p. 518; and *ibid*, 1911, Pt. IVA, p. 26.

LOCAL EXTENT.—This Act extends to the areas mentioned in s. 1 (2), and may be extended by notification to any town or selected area in Province of Bihar and Orissa, see s. 2 (1).

The application of the Act is barred in—

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I, p. 864; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulations, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 777

[²] Printed in Vol. II of this Code.

[³] Printed in the Bengal Code, 4th Ed., 1913-1915, Vol. III.

(Sees. 8-10.)

"a day not less than seven or more than ten days;"

(2) for the words "by the operator or by any person deputed for that purpose by the Superintendent of Vaccination" the following shall be substituted, namely:—

"by the operator (if a medical practitioner) or by an Inspector;"

(3) for the words "and it shall be the duty of any public vaccinator who has vaccinated a child elsewhere than at a public vaccine-station to visit the child at the time and for the purpose abovementioned whether he is requested to do so or not, unless the Superintendent of Vaccination has deputed some other person to act for such public vaccinator in this behalf" the following shall be substituted, namely:—
 "and when any public vaccinator has vaccinated a child elsewhere than at a public vaccine-station, an Inspector shall visit the child at the time and for the purpose abovementioned, whether he is requested to do so or not;"

(4) for the words "the public vaccinator" the words "the Inspector" shall be substituted; and

(5) for the words "a public vaccinator" the words "an Inspector" shall be substituted.

8. In section 5 of the said Act, [7]—

(1) for the words "public vaccinator" in both places in which they occur, the word "Inspector" shall be substituted, and
 (2) for the words "three months," in both places in which they occur, the words "one month" shall be substituted.

9. For section 6 of the said Act [7] the following shall be substituted, Amendment of section 6, namely:—

6. [Printed in Vol. II of this Code.]

10. In section 7 of the said Act, [7] for the words "Every public vaccinator or medical practitioner who shall have performed the operation of vaccination upon any child and shall have ascertained that the same has been successful," the following shall be substituted, namely:—

"When a public vaccinator or medical practitioner has performed the operation of vaccination upon any child, and an Inspector or such practitioner has ascertained that the same has been successful, such Inspector or practitioner, as the cases may be."

Amendment
of section 8.

11. In section 8 of the same Act,[¹]

(1) for the words "public vaccinator," where they first occur, the word "Inspector" shall be substituted, and

(2) after the word "nor" the words "by any public vaccinator" shall be inserted.

Amendment
of section 10.

12. In section 10 of the said Act,[¹] after the word "assistants" the words "or any Inspector" shall be inserted.

Amendment
of sections
13A, 29A and
29B.

13. In sections 13A, 29A and 29B of the said Act,[¹] after the words "public vaccinator" the words "or Inspector" shall be inserted.

Amendment
of sections 15,
16 and 33.

14. In sections 15, 16 and 33 of the said Act,[¹] after the words "public vaccinators," wherever they occur, the words "and Inspectors" shall be inserted.

Amendment
of section 19.

15. In section 19 of the said Act,[¹] for the words "public vaccinator" the word "Inspector" shall be substituted.

Amendment
of section 28.

16. In clause (a) of section 28 of the said Act,[¹] before the words "after vaccination" the words "to the operator (if a medical practitioner) or to an Inspector" shall be inserted.

Amendment
of Schedule
A.

17. In Schedule A to the said Act,[¹]

(1) for the words "three months" the words "one month" shall be substituted, and

(2) for the words "Public Vaccinator" the word "Inspector" shall be substituted.

Amendment
of Schedule
B.

18. For Schedule B to the said Act[¹] the following shall be substituted, namely:—

SCHEDULE B.

[Printed in Vol. II of this Code.]

Amendment
of Schedule
C.

19. In Schedule C to the said Act,[¹]

(1) after the words "by me" the words "(or by a public vaccinator)" shall be inserted, and

(2) for the words "Public Vaccinator" the word "Inspector" shall be substituted.

Amendment
of Schedule
E.

20. In Schedule E to the said Act,[¹]

(1) for the words "one year" the words "six months" shall be substituted, and

[¹] The Bengal Vaccination Act, 1880. It is printed in Vol. II of this Code.

(2) for the words "the public vaccinator," in the fourth place in which they occur, and for the words "a public vaccinator," the words "an Inspector" shall be substituted.

(Sec. 20.)

(THE BENGAL LOCAL GOVERNMENT ACT, 1911.) [1]

(13th September, 1911.)

An Act to transfer functions of the Lieutenant-Governor of Bengal to the Lieutenant-Governor in Council.

WHEREAS the Governor General in Council has, with the approval of the Secretary of State in Council, by Proclamation No. 5278, dated the 18th November, 1910, [1] made under section 3 of the Indian Councils Act, 1909, created a Council for the purpose of assisting the Lieutenant-Governor in the executive government of the Province of Bengal;

And whereas it is expedient to direct that the functions of the Lieutenant-Governor under enactments made by authorities in British India shall, with certain exceptions, be discharged by the Lieutenant-Governor in Council;

And whereas the sanction of the Governor General has been obtained, under section 5[7] of the Indian Councils Act, 1892, to the passing of this Act;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Local Government Act, 1911. Short title.

2. All functions of the Lieutenant-Governor of Bengal under any enactment made by any authority in British India, or under any notification, order, scheme, rule, by-law or form issued, made or prescribed under any such enactment, shall be discharged by the Lieutenant-Governor in Council:

Provided that the Lieutenant-Governor may, by written order, with the previous sanction of the Governor General in Council, direct that any such function shall be discharged by the Lieutenant-Governor personally.

3. (1) Save in cases where an officer is specially empowered by or signature of orders and proceedings—

[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1911, Pt. IV, p. 206; for Proceedings in Council, see *ibid.*, Pt. IV, pp. 337, 346.

LOCAL EXTENT.—Since this Act has no local extent clause, it must be taken originally to have extended to the whole of the former Province of Bengal. It extends to the Province of Bihar and Orissa.

[2] Published in the Calcutta Gazette Extraordinary, dated the 18th November, 1910. [3] Printed in the Collection of Statutes relating to India, 1913, Vol. II, p. 804.

(Sec. 4.)

ant-Governor in Council or the Lieutenant-Governor, every order and proceeding of the Lieutenant-Governor in Council or the Lieutenant-Governor shall be signed by a Secretary, Deputy Secretary, Under-Secretary or Assistant Secretary to the Government of Bengal.

(2) Every order and proceeding so signed shall be presumed to have been issued in conformity with—

(a) section 2, or

(b) the orders made by the Lieutenant-Governor under the proviso to the section, or

(c) the rules and orders^[1] made by the Lieutenant-Governor, with the consent of the Governor General in Council, under section 3, sub-section (3), of the Indian Councils Act, 1909, ^{9 Edw. 7,} for the more convenient transaction of business in his Executive Council, ^{c. 4.}

as the case may be.

4. All orders and proceedings under any enactment, notification, order, scheme, rule, by-law or form referred to in section 2, which were required by law to be issued by the Lieutenant-Governor of Bengal and have, before the commencement of this Act, been issued in the name of the Lieutenant-Governor of Bengal in Council, shall be deemed to be as valid as if they had been issued in the name of the Lieutenant-Governor.

[1] These rules and orders have been superseded by rules and orders made by the Lieutenant-Governor of Bihar and Orissa, under section 28 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67), as applied by section 1 (1) of the Government of India Act, 1912 (2 & 3 Geo. 5, c. 6).

Validation
of past orders
and proceed-
ings.

[THE CHOTA NAGPUR ENCUMBERED ESTATES (AMENDMENT) ACT, 1911].

(13th September, 1911.)

An Act further to amend the Chota Nagpur Encumbered Estates Act, 1876.

WHEREAS it is expedient further to amend the Chota Nagpur Encumbered Estates Act, 1876,

And whereas the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act;

It is hereby enacted as follows:—

1. This Act may be called the Chota Nagpur Encumbered Estates Short title. (Amendment) Act, 1911.

2. After section 2A of the Chota Nagpur Encumbered Estates Act, 1876, the following shall be inserted, namely:—

“2B. At any time after the receipt of an application under section 2 from or in the case of any holder, the Commissioner may, by order, prohibit the sale of the immovable property of such holder, or any portion thereof, in execution of any decree or order of any Civil or Revenue Court, until the passing of final orders on such application, either rejecting it or vesting the property in a manager.”

3. In the concluding paragraph of section 12 of the said Act, after the words “the publication of the order mentioned in section 2” the words “or the making of the order (if any) mentioned in section 2B” shall be inserted.

[1] LEGISLATORS PAPERS—For Statement of Objects and Reasons, see Calcutta Gazette, 1911, Pt. IV, p. 204; for Proceedings in Council, see *ibid*, 1911, Pt. IVA, pp. 246-247, 337 and 346.
LOCAL EXTENT.—Since this Act merely amends the Chota Nagpur Encumbered Estates Act, 1876 (6 of 1876, printed in Vol. I of this Code), its local extent must be taken to be the same as that of the latter Act.
[2] Printed in Vol. I of this Code.
[3] Printed in the Collection of Statutes relating to India, 1913, Vol. II, p. 804.

BENGAL ACT 2 OF 1912.
(THE BENGAL MINING SETTLEMENTS ACT, 1912.)

CONTENTS.

1.	Short title and extent.	SECTION.
2.	Definitions.	
3.	Appointment of Mines Board of Health.	
4.	Procedure for declaring area to be a mining settlement.	
5.	Appointment, status and duties of Sanitary Officers.	
6.	Notice requiring owners to execute and maintain works of sanitation, or to carry on periodical sanitary operations.	
7.	Power for Mines Board of Health to execute work in default of owners.	
8.	Power of Chairman to discharge functions of Board in certain cases.	
9.	Service of notices.	
10.	Charging, appointment and recovery of expenses.	
11.	Power to make rules.	
12.	Powers of Sanitary Officers.	
13.	Powers to be afforded to Sanitary Officers.	
14.	Powers of Mines Boards of Health for obtaining evidence.	
15.	Penalties for offences.	
16.	Prosecution of owner, agent or manager.	
17.	Limitation of prosecutions.	
18.	Cognizance of offences.	
19.	Power of Local Government to alter or rescind orders.	

(THE BENGAL MINING SETTLEMENTS ACT, 1912.) [1]

(30th March, 1912.)

An Act to provide for the better control and sanitation of Mining Settlements in Bengal.

Whereas it is expedient to provide for the better control and sanitation of mining settlements in Bengal;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Mining Settlements Act, 1912; and Short title and extent.

(2) It extends to the whole of Bengal[2] including the Sonthal Paraganas.

2. The expressions “agent,” “employed,” “mine” and “owner,” as used in this Act, shall have the same meaning as in section 3[3] of the Indian Mines Act, 1901. Definitions.

3. (1) The Local Government may, by notification in the local official Gazette, appoint, for any area or areas in which persons employed in a mine reside, a Mines Board of Health, consisting of not less than five or more than nine persons; and shall appoint one of the members to be Chairman. Appointment of Mines Board of Health.

(2) Two of the persons appointed under sub-section (1) shall be nominated by owners of mines or their representatives:

Provided that, if the Board consists of more than five members, three shall be so nominated.

(3) One of the persons appointed under sub-section (1) shall be nominated by persons who receive royalties, rents or fines from mines.

(4) Nominations under sub-section (2) or sub-section (3) must be made under such procedure, and within such period, as may be prescribed

LOCAL EXTENT.—1
Bengal. It, therefore,
Part
tion

strict, by the Angul Laws Regula-

(Secs. 4-5.)

by rules made under this Act; and, in default of nomination in accordance with such rules, the Local Government may appoint any person it thinks fit.

Procedure
for declaring
area to be a
mining settle-
ment.

4. (1) The Local Government may, of its own motion, or after considering any report submitted to it by a Mines Board of Health, publish a notice in the local official Gazette and in such other manner (if any) as it may think fit, intimating its intention to declare any area (not being or forming part of a mine) to be a mining settlement for the purposes of this Act.

(2) The Local Government shall consider any objections to the intended declaration which may be submitted to it in writing within such period as may be specified in this behalf in the said notice,

and may then, by notification in the local official Gazette, declare that any area or portion of an area referred to in the said notice shall, for the purposes of this Act, be a mining settlement, and be subject to the authority of such Mines Board of Health as the Local Government may designate.

Appointment,
status and
duties of
Sanitary
Officers.

5. (1) The Local Government shall appoint as many Sanitary Officers as it may consider necessary for mining settlements, and shall declare the Mines Board of Health to which each such officer shall be subordinate.

(2) Every Sanitary Officer shall be deemed to be a public servant within the meaning of the Indian Penal Code.^[1] 45 of 1860.

(3) It shall be the duty of a Sanitary Officer appointed to a mining settlement or any part thereof—

(a) to report to the Mines Board of Health what measures should, in his opinion, be taken—

(i) to provide for the supply of filtered, boiled or other water,

(ii) to provide for sanitation and conservancy, and

(iii) to provide for the housing of residents; and

(b) to exercise, subject to the control of the Mines Board of Health to which he is subordinate, such other functions, consistent with the objects of this Act and calculated to prevent the outbreak or spread of dangerous epidemic disease, as the Local Government may by general or special order, direct, or as may be delegated to him by such Board.

(Secs. 6-7.)

6. (1) If the Mines Board of Health approve any measures reported by a Sanitary Officer under clause (a) of sub-section (3) of section 5,

Notice requiring owners to execute and maintain works of sanitation, or to carry on periodical sanitary operations.

or if they consider that any other measures should be taken to provide for any of the purpose referred to in that clause, the Board shall serve,—

- (a) on the owners of all mines in which are employed persons residing in the mining settlement, or in the part of the mining settlement to which such measures relate, or
- (b) on the holders of the land occupied by such mining settlement or part, if they are not the owners of the said mines,

a notice specifying such measures and requiring such owners or landholders—

- (i) to execute, within a period to be fixed by the notice, all works that the Board may consider necessary for carrying such measures into effect, and to maintain in good repair all works so executed, or
- (ii) to carry on continuously such periodical operations as the Board may direct, for carrying such measures into effect,
- or
- (iii) both to execute and maintain works and to carry on operations as aforesaid.

(2) Nothing in this section shall apply to landholders other than proprietors, permanent tenure-holders, rent-free holders or holders of a maintenance grant.

7. If any work required by a notice served under section 6 be not executed to the satisfaction of the Board within the period fixed by the notice, or within such further period (if any) as may be allowed by the Board, or

Power for Mines Board of Health to execute work in default of owners.

if any work executed in pursuance of any such notice be not maintained in repair to the satisfaction of the Board, or

if any operations required by any such notice be not carried on to the satisfaction of the Board,

the Board, after serving a warning notice on the defaulters, shall prepare an estimate of the cost of the work which ought, in their opinion, to be carried out, and may entertain any establishment necessary for the preparation of such estimate, and may also cause such work to be executed

(Secs. 8-10.)

Power for
Chairman to
discharge
functions of
Board in
certain cases.

8. Any of the powers or duties conferred or imposed by section 6 or section 7 upon a Mines Board of Health may be exercised or performed by the Chairman of the Board in any case which he considers to be of such urgency as to render it impracticable to hold a meeting of the Board.

Service of
notices.

9. Any notice sent by post under section 6 or section 7 shall be forwarded under registered cover.

Charging,
apportion-
ment and
recovery of
expenses.

10. (1) All expenses incurred by a Mines Board of Health for the purposes of this Act, other than expenses under section 7 and section 8, shall be charged to—

(a) all owners of mines in which are employed persons residing in the mining settlements which are subject to the authority of that Board, and

(b) all persons who receive any royalty, rent or fine from such mines.

(2) All expenses incurred by a Mines Board of Health under section 7, or by the Chairman thereof under section 8, whether or not they exceed the estimate prepared under the former section,

and all expenses incurred by any holder of land in executing or maintaining any work or carrying on any operations in pursuance of a notice served under clause (b) of sub-section (1) of section 6,

shall be charged to—

(i) all owners of mines in which are employed persons residing in the settlement or part, and

(ii) all persons who receive any royalty, rent or fine from such mines:

Provided that, if it can be shown to the satisfaction of the Board that the insanitary condition is distinctly referable to any act or omission on the part of one or more mine-owners in respect to his or their property, the Board may direct that the expenses incurred shall be payable by such owner or owners only.

(3) Save in the case specified in the proviso to sub-section (2), the expenses referred to in sub-sections (1) and (2) shall be charged to the said owners and persons in such proportions as the Local Government may, from time to time, direct:

Provided that the assessment shall be based—

(i) in the case of owners of mines, on the output of their mines;
and

(Sec. 11.)

(ii) in the case of the receivers of any royalty, rent or fine, on the road cess payable by such persons.

(4) All expenses chargeable under this section shall be recoverable as if they were arrears of land-revenue.

(5) When any expenses incurred by any holder of land in executing or maintaining any work or carrying on any operations in pursuance of a notice served under clause (b) of sub-section (1) of section 6, have been recovered, they shall be repaid to him:

Provided that, if any question arises as to the amount of expenses incurred by such landholder, the award of the Mines Board of Health shall, subject to an appeal to the Commissioner, be final.

11. (1) The Local Government may, by notification in the local official Gazette, make rules^[1] for carrying out the purposes and objects of this Act in respect of all mining settlements or any groups or classes of mining settlements. Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

- (a) provide for the nomination, appointment and tenure of office of members of a Mines Board of Health, and regulate the procedure of such Board and the powers and functions of the Chairman;
- (b) regulate all expenditure to be incurred by a Mines Board of Health, and the methods under which sums due to it may be calculated and recovered;
- (c) regulate the duties and powers of Sanitary Officers, and provide for appeals from their orders;
- (d) prescribe the duties of owners, agents and managers of mines in respect of mining settlements, and of all persons acting under them;
- (e) prescribe the matters in respect of which notices, returns and reports shall be furnished by owners, agents and managers of mines, the form of such notices, returns and reports, the persons and authorities to whom they are to be furnished, and the particulars to be contained in them;
- (f) prescribe the plans (if any) to be kept by owners, agents and managers of mines in respect of mining settlements, and the manner and places in which they are to be kept for purposes of record;

^[1] For rules made under this section—see B. and O. Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 12-13.)

- (g) provide for the supply of filtered, boiled or other water, and for sanitation and conservancy, in mining settlements;
- (h) provide for the taking of measures to prevent the outbreak or spread of dangerous epidemic disease in mining settlements;
- (i) provide against the accumulation of water in mining settlements.

(3) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.^[1]

(4) The date to be specified as that on or after which a draft of rules proposed to be made under this section will be taken into consideration shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(5) Where a Mining Board has been constituted under section 9^[2] of the Indian Mines Act, 1901, any rule to be made under this Act shall, so 1901 before it is published for criticism under sub-section (3), be referred to the Mining Board, and the rules shall not be so published until the said Board has been consulted as to the suitability of its provisions.

(6) All rules made under this section shall be published in the local official Gazette, and, on such publication, shall have effect as if enacted in this Act.

Powers of
Sanitary
Officers.

12. A Sanitary Officer may, within any mining settlement for which he is appointed,—

- (a) make such examination and inquiry as he thinks fit, in order to ascertain whether the provisions of this Act and of the rules and orders made thereunder are observed;
- (b) enter, with such assistants (if any) as he thinks fit, inspect and examine any mining settlement or any part thereof, at all reasonable times by day or by night;
- (c) examine into, and make inquiry respecting, the sanitary condition of any mining settlement or any part thereof, and the sufficiency of the rules for the time being in force in the settlement; and
- (d) do all other things required of him by or under this Act.

Facilities to
be afforded
to Sanitary
Officers.

13. The owners, agents and managers of mines in which are employed persons residing in any mining settlement, or

the owners of the land occupied by such settlement, if they are not the owners of such mines,

^[1] As to previous publication, see the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 24, *ante*, p. 148.

^[2] Printed in the General Acts, 1898-03, Ed. 1909, p. 520.

(Secs. 14-16.)

shall furnish the Sanitary Officer, on requisition, with all reasonable facilities for making any entry, inspection, examination or inquiry under this Act, in relation to the sanitary condition of such settlement.

14. A Mines Board of Health shall have the powers of a Civil Court for the purpose of enforcing the attendance of witnesses and compelling the production of documents; and every person required by any such Board to furnish information before it shall be deemed to be legally bound to do so within the meaning of section 176^[1] of the Indian Penal Code.

Powers of
Mines Boards
of Health
for obtaining
evidence.

15. (1) Whoever obstructs any Sanitary Officer in the discharge of his duties under this Act, or refuses or wilfully neglects to furnish him with the means necessary for making any entry, inspection, examination or inquiry thereunder in relation to any mining settlement, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Penalties for
offences.

(2) Whoever makes, gives or delivers any notice or return required by or under this Act which contains a statement, entry or detail which is not, to the best of his knowledge or belief, true shall be punishable with fine which may extend to five hundred rupees.

(3) Whoever—

(a) fails to comply with any requisition or order made under any provision of this Act or of any rule or order made thereunder; or

(b) contravenes any provision of this Act or any rule or order thereunder, for the breach of which no penalty is otherwise provided,

shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing breach under clause (a) of this sub-section, with a further fine which may extend to fifty rupees for every day during which the breach is proved to have been persisted in after the date of the receipt by him of the requisition or order referred to in that clause.

(4) All fines realised under this section shall be made over to the Mines Board of Health at whose instance the prosecution was instituted, to be employed in furtherance of the objects of this Act.

16. No prosecution shall be instituted against any owner, agent or manager of a mine for any offence against this Act or any rule or order thereunder, except at the instance of a Mines Board of Health.

Prosecution
of owner,
agent or
manager.

(Secs. 17-19.)

Limitation
of prosecu-
tions.

17. No Court shall take cognizance of any offence against this Act or any rule or order thereunder, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

Cognizance
of offences.

18. No Court inferior to that of a Magistrate of the first class or Sub-divisional Magistrate shall try any offence against this Act or any rule or order thereunder which—

(a) is alleged to have been committed by any owner, agent or manager of a mine, or

(b) is punishable with imprisonment.

Power of
Local Govern-
ment to
alter or
rescind
orders.

19. The Local Government may reverse or modify any order passed under this Act by any authority.

PART II.—BIHAR AND ORISSA ACT, 1913 TO 1915.

BIHAR AND ORISSA ACT 1 OF 1913.

(THE BIHAR AND ORISSA BOARD OF REVENUE ACT, 1913.)

CONTENTS.

SECTIONS.

1. Short title.
 2. " " " "
 3. " " " "
 4. " " " "
 5. " " " " *rd.*
 6. Review of orders by Board.
 7. Repeal.
-

THE SCHEDULE—ENACTMENTS REPEALED

PART II.—BIHAR AND ORISSA ACTS, 1913 TO 1915, IN FORCE IN THE
PROVINCE OF BIHAR AND ORISSA.

BIHAR AND ORISSA ACT 1 OF 1913.[¹]

(THE BIHAR AND ORISSA BOARD OF REVENUE ACT, 1913.)

(21st May, 1913.)

An Act to alter the constitution of the Board of Revenue
for Bihar and Orissa.

55 & 56 Vict.,
c. 14.

Whereas it is expedient to alter the constitution of the Board of
Revenue for Bihar and Orissa;

And whereas the sanction of the Governor-General has been obtained
under section 5[²] of the Indian Councils Act, 1892, to the passing of
this Act;

It is hereby enacted as follows:—

1. This Act may be called the Bihar and Orissa Board of Revenue Short title.
Act, 1913..

2. The Board of Revenue for the Province of Bihar and Orissa shall be called the Board of Revenue for Bihar and Orissa.[³]

Designation
of Board.

1913

reasons, see B. and O. Gazette,
I, pp. 292 and 293.

Province of Bihar and Orissa

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed
in Vol. I, p. 864; and

Regulation (3 of 1872),
and Laws Regulation,

Vol II, p. 804

Bengal Revenue Commissioners Regulation, 1829 (1 of 1829), s. 4 (1), (2), in Vol. I of this
Code.

, see the Court of Wards Act, 1879 (Ben.

(2) The Bengal Land-revenue Settlement Regulation, 1822 (7 of 1822), s. 35, in Vol. I
of this Code (Boards, Committees and Commissions specially vested with
powers and authority of the Board of Revenue), and

(3) The Bengal Revenue Commissioners Regulation, 1829 (1 of 1829), s. 4, clause 1,
in Vol. I of this Code (Commissioners of Divisions).

As to the control of Commissioners by the Board, see the Bengal Revenue Commis-
sioners Regulation, 1829 (1 of 1829), s. 4 (2), in Vol. I of this Code.

(Secs. 3-7.)

Number of
Members of
Board.

3. The said Board shall consist of one Member only, to be appointed by the Local Government by notification in the local official Gazette:

Provided that the Local Government may, at any time, by like notification, with the previous sanction of the Government of India, appoint a temporary additional Member.

Powers and
duties of
additional
Member.

4. An additional Member of the Board of Revenue appointed under the proviso to section 3 shall exercise and perform such powers and duties of the Board as the Local Government may direct.

Construction
of references
to former
Boards.

5. All references in any enactment or in any notification, order, scheme, rule, form or by-law issued, made or prescribed under any enactment to—

(a) the Board of Revenue as constituted under the Bengal Board III of 1822. of Revenue Regulation, 1822,^[1] and under clause *first* of section 4 of the Bengal Revenue Commissioners Regulation, I of 1829. 1829,^[2] or

(b) the Board whose functions were transferred to the said Board XLIV of of Revenue by the Bengal Board of Revenue Act, 1850,^[1] 1850. shall be construed as references to the Board as re-constituted by or under this Act.

Review of
orders by
Board.

6. (1) Any person considering himself aggrieved by any order of the Board of Revenue may apply to the Board for a review of the same; and, if the Board considers there are sufficient reasons for so doing, it may review the order and pass such further order as it thinks fit.

(2) Every application under sub-section (1) for a review of any order must be made within a period of three months from the date of the order:

Provided that the Board may in its discretion in any case extend such period, if sufficient reasons be shown for so doing.

Repeal.

7. The enactments specified in the Schedule are hereby repealed, to the extent mentioned in the fourth column thereof.

[¹] Ben. Reg. 3 of 1822 and Act 44 of 1850, which are repealed by this Act, see the Schedule.

[²] Printed in Vol. I of this Code.

(The Schedule.)

THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 7.)

Year.	No.	Short title.	Extent of repeal.
1	2	3	4

Bengal Regulation.

1822	III	The Bengal Board of Revenue Regulation, 1822	So much as is unrepealed.
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Acts of the Governor-General of India in Council.

1850	XLIV	The Bengal Board of Revenue Act, 1850.	So much as is unrepealed.
1874	XV	The Laws Local Extent Act, 1874.	So much of the fourth Schedule as relates to Bengal Regulation III of 1822 and Act XLIV of 1850.
1891	XII	The Amending Act, 1891	So much of the second Schedule as relates to Bengal Regulation III of 1822.
1903	..	The Repealing and Amending Act, 1903	So much of the second Schedule as relates to Bengal Regulation III of 1822.
1912	VII	The Bengal, Bihar and Orissa and Assam Laws Act, 1912.	Section 4.

BIHAR AND ORISSA ACT 2 OF 1913.

(THE ORISSA TENANCY ACT, 1913.)

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title, commencement and local extent.
 2. Repeal.
 3. Definitions.
-

CHAPTER II.

CLASSES OF TENANTS.

4. Classes of tenants.
 5. Meaning of "tenure-holder" and "raiyyat."
 6. Status of *hajiastidars* and sub-proprietors.
-

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

7. Tenure in a permanently-settled area held since Permanent Settlement, liable enhancement only in certain cases.
8. Limits of enhancement of rent of tenures.
9. Power to order gradual enhancement.
10. Rent once enhanced may not be altered for fifteen years.

Other incidents of tenures.

11. Permanent tenure-holder not liable to ejectment.
 12. Transfer and transmission of permanent tenure.
 13. Saving as resumable and non-transferable tenures.
 14. Transfer of tenure by succession.
 15. consent of landlord.
 16.
 17.
 18.
 19.
 20. Return of landlord's fee.
-

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

21. Incidents of holding at fixed rates.

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

SECTION.

- 22. Continuance of existing occupancy-rights.
- 23. Definition of "settled raiyat."
- 24. Settled raiyats to have occupancy-rights.
- 25. Acquisition of occupancy-rights in an area not included in a village.
- 26. Effect of acquisition of occupancy-right by landlord.

Incidents of occupancy-right.

- 27. Rights of raiyat in respect of use of land.
- 28. Obligation of raiyat to pay rent.
- 29. Protection from eviction, except on specified grounds.
- 30. Devolution of occupancy-right on death.
- 31. Transfer of occupancy-holding by private sale.

Enhancement of rent.

- 32. Presumption as to fair and equitable rent.
- 33. Restriction on enhancement of money-rents.
- 34. Enhancement of rent by contract.
- 35. Enhancement of rent by suit.
- 36. Rules as to enhancement on ground of prevailing rate.
- 37. What may be taken in certain districts to be the "prevailing rate."
- 38. Limit to enhancement of prevailing rate.
- 39. Rules as to enhancement on ground of rise in prices.
- 40. Rules as to enhancement on ground of landlord's improvement.
- 41. Rules as to enhancement on ground of increase in productive powers due to fluvial action.
- 42. Enhancement by suit to be fair and equitable.
- 43. Power to order progressive enhancement.
- 44. Limitation of right to bring successive enhancement suits.

Reduction of rent.

- 45. Reduction of rent.

Price-lists.

- 46. Price-lists of staple food-crops.

Commutation.

- 47. Commutation of rent payable in kind.
- 48. Period for which commuted rents are to remain unaltered.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

- 49. Application of Chapter.
- 50. Initial rent of non-occupancy-raiyat.
- 51. Conditions of enhancement of rent.
- 52. Grounds on which non-occupancy-raiyat may be ejected.
- 53. Conditions of ejectment on ground of refusal to agree to enhancement.
- 54. Explanation of "admitted to occupation."

CHAPTER VII.

LANDS EXEMPTED FROM CHAPTERS V AND VI.

SECTION.

55. Bar to acquisition of right of occupancy in, and to application of Chapter VI to, proprietors' private lands and certain other lands.

CHAPTER VIII.

UNDER-RAIYATS.

56. Limit of rent recoverable from under-raiyats.
57. Restriction on ejectment of under-raiyats.

CHAPTER IX.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

58. Rules and presumptions as to fixity of rent.
59. Presumption as to amount of rent and conditions of holding.

Alteration of rent on alteration of area.

60. Alteration of rent in respect of alteration in area.
61. Reclamation of waste land.

Payment of Rent.

62. Instalments of rent.
63. Time and place for payment of rent.
64. Appropriation of payments.

Receipts and Accounts.

65. .
66. close of year,
account and failing to
keep counterparts.
68. Local Government to prepare forms of receipt and account.
69. Effect of receipt by registered proprietor, manager, mortgagee, sub-proprietor or tenure-holder.

Deposit of Rent.

70. Application to deposit rent in Court.
71. Receipt granted by Court for rent deposited to be a valid acquittance.
72. Notification of receipt of deposit.
73. Payment or refund of deposit.

Arrears of Rent.

74. Liability to sale for arrears in case of permanent tenure-holder, *bajiaftidar*, raiyat holding at fixed rate, *chandnadar* or occupancy-raiyat.
75. Ejectment for arrears in other cases.
76. Interest on arrears of money-rent.
77. Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

Produce-rents.

SECTION.

- 78. Recovery of produce-rent.
- 79. Order for appraising or dividing produce.
- 80. Procedure where officer appointed.
- 81. Rights and liabilities as to possession of crop.

Liability for rent on change of landlord or after transfer of tenure or holding.

- 82. Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.
- 83. Liability for rent on transfer without consent in permanently-settled estate.

Illegal cesses, etc.

- 84. *Abwab*, etc., illegal.
- 85. Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

CHAPTER X.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

- 86. Definition of "improvement."
- 87. Right to make improvements in case of holding at fixed rates or occupancy-holding.
- 88. Collector to decide question as to right to make improvement, etc.
- 89. Right to make improvements in case of non-occupancy-holding.
- 90. Registration of landlord's improvements.
- 91. Application to record evidence as to improvement.
- 92. Compensation for raiyat's improvements.
- 93. Principle on which compensation is to be estimated.

Acquisition of land for building and other purposes.

- 94. Acquisition of land for building and other purposes.

Sub-letting.

- 95. Restrictions on sub-letting.

Usufructuary Mortgage.

- 96. Restrictions on usufructuary mortgage.

Surrender and Abandonment.

- 97. Surrender.
- 98. Abandonment.

Sub-division of tenancy.

- 99. Division of tenancy not binding on landlord without his consent.

Ejectment.

- 100. No ejectment except in execution of decree.

Measurements.

- 101. Landlord's right to measure land.
- 102. Power for Court to order tenant to attend and point out boundaries.
- 103. Standard of measurement.

Managers.

- 104. Power to call upon co-owners to show cause why they should not appoint a common manager.
- 105. Power to order them to appoint a manager if cause is not shown.

SECTION.

106. Power to appoint manager if order is not obeyed.
107. Power to nominate person to act in all cases under clause (b) of last section.
108. 379. to management by Court of Wards.
109. *wars.*
110.
111. Power to make rules.

CHAPTER XL.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Part I —Record-of-rights.

112. Power to order survey and preparation of record-of-rights.
113. Particulars to be recorded.
114.
115.
116.
117. Presumption as to final publication and correctness of record-of-rights.

Part M.—Settlement of Rents, Preparation of Settlement Rent Roll, and Disposal of Objections, in cases where a settlement of land-revenue is being or is about to be made.

118. Settlement of rents and preparation of Settlement Rent Roll when to be undertaken by Revenue-officer.
119. Procedure for settlement of rents and preparation of Settlement Rent Roll under this Part.
120. (1) Contents of Table of Rates.
(2) Local publication of Table.
(3) Revenue-officer to deal with objections.
(4) Table to be submitted to superior Revenue-authority.
(5) Proceedings of confirming authority.
(6) Effect of Table.
121. Application of Table of Rates.
122. Rules and principles to be followed in framing Table of Rates, and settling rents in accordance therewith.
123. Preliminary publication and amendment of Settlement Rent Roll.
124. Final revision of Settlement Rent Roll, and incorporation of the same in the record-of-rights.
125. Appeal to, and revision by, superior Revenue authorities.
126. Jurisdiction of Civil Courts in matters relating to rent.
127. Presumptions as to rents settled under sections 119 to 125.

Part III—Settlement of Rents and Decision of Disputes in cases where a settlement of land-revenue is not being or is not about to be made.

128. Settlement of rents by Revenue-officer in cases where a settlement of land-revenue is not being or is not about to be made.
129. Decision of questions arising during the course of settlement of rents under this Part.
130. Institution of suit before a Revenue-officer.
131. Procedure to be adopted by Revenue-officer.
132. Revision by Revenue-officer.
133. Correction by Revenue-officer of mistakes in record-of-rights.
134. Bar to jurisdiction of Civil Courts.
135. Appeals from decisions of Revenue-officers

Part IV.—Supplemental Provisions.

136. Power of Revenue-officer to give effect to agreement or compromise.
137. Power of Revenue-officer to settle rents on agreement.
138. Note of decisions in record.

SECTION.

139. Date from which settled rent takes effect.
140. Stay of proceedings during preparation of record-of-rights.
141. Limitation of jurisdiction of Civil Courts in matters, other than rent, relating to record-of-rights.
142. Stay of suits in which certain issues arise.
143. Power to authorize special settlement in special cases.
144. Period for which rents as settled are to remain unaltered.
145. Expenses of proceedings under Chapter.
146. Presumption as to fixity of rent not to apply where record-of-rights has been prepared.
147. Demarcation of village boundaries.
148. Validation of publication of certain past records.
149. Effect of settlements of rent and decision by Revenue-officers made before the 5th November, 1898.

CHAPTER XII.

RECORD OF PROPRIETORS' PRIVATE LANDS.

150. Power for Government to order survey and record of proprietors' private lands.
151. Power for Revenue-officer to record private land on application of proprietor or tenant.
152. Procedure for recording private land.
153. General rules for determination of proprietors' private lands.
154. Special rules for determination of proprietors' private lands in temporarily-settled estates.

CHAPTER XIII.

DISTRRAINT.

155. Cases in which distraint may be made.
156. Service of demand and notice.
157. Right to distraint after delivering a list of property to owner.
158. Right to reap, etc., produce.
159. Assistance of public officer in making distraint.
160. Application to public officer for sale.
161. Procedure on receipt of such application.
162. Suspension of sale when suit instituted.
163. Withdrawal of distraint when security given for payment of any sum that may be decreed.
164. Sale when to be made.
165. Place of sale.
166. When produce may be sold standing.
167. Manner of sale.
168. Postponement of sale.
169. Payment of purchase-money.
170. Certificate to be given to purchaser.
171. Application of proceeds of sale.
172. Certain persons may not purchase.
173. Procedure where demand is paid before the sale.
174. Amount paid by under-tenant for his lessor may be deducted from rent.
175. Conflict between rights of superior and inferior landlords.
176. Report of irregularities.
177. Postponement of sale where due notice not given.
178. Charge to be made for expenses when no sale takes place.
179. Charge for expenses by whom to be paid.
180. Control by Collector.
181. Procedure in suit to contest demand of distrainer.
182. Sale of distrained property in execution of decree.

SECTION.

183.

184.

185.

186.

187.

188.

sale.

189.

190.

191.

vexatious or groundless.
rent due by another.

disputed.
ing in time to save his property from

authorized distrainer.
authorized person.

CHAPTER XIV.

JUDICIAL PROCEDURE.

192. Power to modify Code of Civil Procedure in its application to landlord and tenant suits.

by the Collector.

193.

194.

195.

196.

197.

198.

199.

200.

201.

202. Provisions as to payment of portion of money.

203. Court to grant receipt.

204. Appeals.

205. Deposit on application to set aside *ex parte* decree, or for review of judgment.

206. Date from which decree for enhancement takes effect.

207. Relief against forfeitures.

ared for sewing.

208.

209.

210.

CHAPTER XV.

SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER THE PUBLIC DEMANDS RECOVERY ACT, 1895.

211. Recovery of arrears by the certificate procedure in certain areas.

CHAPTER XVI.

SALE FOR ARREARS UNDER DECREE.

212. Passing of tenure or holding sold in execution of decree.

213. General powers of purchasers as to avoidance of incumbrances.

214. Protected interests.

215. Meaning of "incumbrance" and "registered and notified incumbrance."

216. Application for sale of tenure or holding.

217. Order of attachment and proclamation of sale to be issued simultaneously.

218. Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

219.

220.

221.

SECTION.

- 222. Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.
- 223. Rules for disposal of the sale-proceeds.
- 224. Tenure or holding to be released from attachment only on payment into Court of amount of decree with costs or on confession of satisfaction by decree-holder.
- 225. Amount paid into Court to prevent sale to be, in certain cases, a mortgage-debt on the tenure or holding.
- 226. Inferior tenant paying into Court may deduct from rent.
- 227. Decree-holder may bid at sale; judgment-debtor may not.
- 228. Application by judgment-debtor to set aside sale.
- 229. Registration of certain instruments creating incumbrances.
- 230. Notification of incumbrances to landlord.
- 231. Power to create incumbrances not extended.

CHAPTER XVII.

CONTRACT AND CUSTOM.

- 232. Restrictions on exclusion of Act by agreement.
- 233. Permanent *mukarrari* leases.
- 234. *Utbandi*, *char* and *diara* lands.
- 235. Saving as to service-tenures.
- 236. Homesteads.
- 237. Saving of custom.

CHAPTER XVIII.

LIMITATION.

- 238. Limitation in suits, appeals and applications in Schedule III.
- 239. Portions of the Indian Limitation Act not applicable to such suits, etc.

CHAPTER XIX.

SUPPLEMENTAL.

Penalties.

- 240. Penalties.

Damages for denial of landlord's title.

- 241. Damages for denial of landlord's title.

Agents and representatives of landlords.

- 242. Power for landlord to act through agent.
- 243. Joint-landlords to act collectively or by common agent.
- 244. Procedure in suits by joint-landlords.

Rules under Act.

- 245. Power to make rules regarding procedure, powers of officers and service of notices.
- 246. Publication of rules in draft.

Provisions as to temporarily-settled districts.

- 247. Saving as to tenancies held in estates which have never been permanently settled.
- 248. Power to alter rent in case of new assessment of land-revenue.
- 249. Remission and suspension of rent.

Recovery of certain dues.

SECTION.

250. Recovery of certain dues.

Saving for conditions binding on landlords.

251. Tenant not enabled by Act to violate conditions binding on landlord.

Savings for special enactments.

252. Savings for special enactments.

SCHEDULE I.—ENACTMENTS.

SCHEDULE II.—FORMS OF RECEIPT AND ACCOUNT.

SCHEDULE III.—LIMITATION.

BIHAR AND ORISSA ACT 2 OF 1913.

(THE ORISSA TENANCY ACT, 1913.)^[1]

(11th June, 1913.)

An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant in the districts of Cuttack, Puri and Balasore, in the Orissa Division.

Whereas it is expedient to amend and consolidate certain enactments relating to the law of landlord and Tenant in the districts of Cuttack, Puri and Balasore, in the Orissa Division;

And whereas the previous sanction of the Governor General has been obtained, under section 5^[2] of the Indian Councils Act, 1892, to the passing of this Act;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Orissa Tenancy Act, 1913.

(2) It shall come into force^[3] on such date as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, appoint in this behalf; and

Short title,
commence-
ment and
local extent.

(3) It shall extend to the districts of Cuttack, Puri and Balasore in the Orissa Division, except any area or part of an area which is constituted a Municipality under the Bengal Municipal Act, 1884,^[4] and which is specified in this behalf by notification issued by the Local Government.

2. The enactments specified in Schedule I are hereby repealed in the Repeal area to which this Act extends.

[1] LEGISLATIVE
Gazette, 1913, Pt. V
ordinary, pp. i to iv

Bihar and Orissa
see *ibid*, Extra-
19-371.

LOCAL EXTENT.—See s. 1 (3) above. For Notifications exempting a Municipal area, see Bihar and Orissa Statutory Rules and Orders, Vol. I, Pt. VII. This Act does not apply to the Angul District.

[2] Printed in the Collection of Statutes relating to India, 1913, Vol. II, p. 804.

[3] The Act came into force on the 12th September, 1913; see Notification No. 5970, dated the 20th August, 1913, published in the Bihar and Orissa Gazette, 1913, Pt. II, p. 1039.

[4] Printed in Vol. II of this Code.

(Sec. 3.)

3. In this Act, unless there is something repugnant in the subject or Definitions context,—

(1) “agricultural year” means the year commencing on the first day of Baisakh of the Oriya year;

Provided that the first agricultural year shall be deemed to commence on the first day of Baisakh following the date of the commencement of this Act;

XII of
1805.
II of 1819.
XIV of 1825.

(2) “*bajiaftidar*” means a person holding lands the title to hold which upon special terms was declared invalid by the Cuttack Land-revenue Regulation, 1805,^[1] the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819,^[1] or the Bengal Revenue-free Lands Regulation, 1825,^[1] and which have been assessed, in the course of a settlement of land-revenue, at a rent fixed for the term of that settlement; and includes also the successors in interest of such a person;

(3) “*chandnadar*” means a person holding land which has been recorded as *chandna* in the course of a settlement of land-revenue, and for which a rent has been fixed for the term of that settlement; and includes also the successors in interest of such a person;

(4) “Collector,” in any provision of this Act means the Collector of a district, and includes also—

(a) any Revenue Officer or Deputy Collector who is specially empowered by the Local Government to discharge any of the functions of a Collector under that provision, and

(b) any Deputy Collector to whom the Collector may, by general or special order approved by the Commissioner, transfer any of his functions under that provision, other than functions covered by section 204;

(5) “Commissioner” means the Commissioner of the Orissa Division, and includes also any other person specially empowered by the Local Government to discharge the functions of the Commissioner in any particular area;

(6) “Deputy Collector” includes an Assistant Collector and any Sub-Deputy Collector who is specially empowered by the Local Government to discharge any of the functions of a Deputy Collector under this Act;

(7) “estate” means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the

(Sec. 3.)

Collector of a district; and includes Government khas mahals and revenue-free lands not entered in any register; and includes also the sub-proprietary interests referred to in clause (20);

(8) "holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy;

(9) "landlord" means a person immediately under whom a tenant holds, and includes the Government;

(10) "pay," "payable" and "payment" used with reference to rent, includes "deliver," "deliverable" and "delivery;"

(11) "Permanent Settlement" means the Permanent Settlement of portions of Orissa, made in the year 1793 and in subsequent years;

(12) "permanent tenure" means a tenure which is heritable and which is not held for a limited time;

(13) "prescribed" means prescribed by the Local Government by notification in the local official Gazette;

(14) "proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate; and includes also the sub-proprietary interests referred to in clause (21);

(15) "registered" means registered under any Act for the time being in force for the registration of documents;

(16) "rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant; and

for the purposes of sections 62 to 77 and 82 to 85, Chapter XIII, Chapter XVI and Schedule III, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent;

(17) "Revenue Court" means any Court (other than a Civil Court) having jurisdiction under this Act to entertain suits or other proceedings;

(18) "Revenue Officer," in any provision of this Act, means any officer whom the Local Government may appoint to discharge any of the functions of a Revenue Officer under that provision;

(19) "signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to;

(20) "sub-proprietary interest" means the interest of a sub-proprietor;

(21) "sub-proprietor" means a person who, in the course of a settlement of land-revenue, has executed an engagement for the payment of

(Sec. 4.)

his land-revenue through a proprietor or another sub-proprietor; and includes also—

XII of 1805.

- (i) persons holding lands the title to hold which for a payment fixed in perpetuity was declared valid by the Cuttack Land-revenue Regulation, 1805,^[1] and
- (ii) the successors in interest of any person as aforesaid;
- (22) “succession” includes both intestate and testamentary succession;
- (23) “tenant” means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person;
- (24) “tenure” means the interest of a tenure-holder or an under-tenure-holder; and
- (25) “village” means the area defined, surveyed and recorded as a distinct and separate village in—
 - (a) the general land-revenue survey which has been made of the Province of Bengal, or
 - (b) any survey made by the Government which may be adopted by notification in the local official Gazette as defining villages for the purposes of this clause in any specified area;
 and, where a survey has not been made by, or under the authority of, the Government, “village” means such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village.

CHAPTER II.

CLASSES OF TENANTS.

4. There shall be, for the purpose of this Act, the following classes of tenants, namely:—

Classes of tenants.

- (1) tenure-holders, including under-tenure-holders,
- (2) raiyats,
- (3) under-raiyats, that is to say, tenants holding, whether immediately, or mediately, under raiyats, and
- (4) *chandnadars*;

(Sec. 5.)

and the following classes of raiyats, namely:—

- (a) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,
- (b) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and
- (c) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

5. (1) "Tenure-holder" means primarily a person who has acquired from a proprietor, or from another tenure-holder, a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right. Meaning of "tenure-holder" and "raiya."

(2) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a raiyat, unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—

- (a) local custom, and
- (b) the purpose for which the right of tenancy was originally acquired.

Explanation.—In ascertaining the purpose for which the right of tenancy was originally acquired, the Court may have regard to the subsequent conduct of the parties.

(5) Where the area held by a tenant exceeds thirty-three acres, the tenant shall be presumed to be a tenure-holder until the contrary is shown.

(Secs. 6-8.)

Status of
bajiaftidars
and sub-
proprietors.

6. Notwithstanding anything hereinbefore contained—

- (i) every *bajiaftidar* who is recorded, in any record-of-rights finally published under Chapter XI or under any other law for the time being in force, as a *bajiaftidar* tenure-holder, and his successors in interest, shall be deemed to be a tenure-holder for all the purposes of this Act;
- (ii) every *bajiaftidar* who is recorded in any such record-of-rights as a *bajiaftidar* raiyat, and his successors in interest, shall be deemed to be a tenure-holder for the purposes of sections 14 to 20 and 99, and a raiyat for the purposes of all other sections of this Act; and
- (iii) every sub-proprietor shall be deemed to be a tenure-holder for the purposes of sections 14 to 20, 99, 100, and Chapter XVI, and to be a permanent tenure-holder for the purposes of section 74.

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

Tenure in a
permanently-
settled area,
held since
Permanent
Settlement,
liable to
enhancement
only in
certain cases.

7. Where a tenure in a permanently-settled area has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement, except on proof—

- (a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or
- (b) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Limits of
enhancement
of rent of
tenures.

8. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(Secs. 9-11.)

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than ten *per centum* of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them, and shall have regard to—

(a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(b) the improvements (if any) made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

9. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached. Power to order gradual enhancement.

10. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced. Rent once enhanced may not be altered for fifteen years.

Other incidents of tenures.

11. A holder of a permanent tenure shall not be ejected by his landlord, except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected: Permanent tenure-holder not liable to ejection.

Provided that, where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

(Secs. 6-8.)

Status of
bajiaftidars
and sub-
proprietors.

6. Notwithstanding anything hereinbefore contained—

- (i) every *bajiaftidar* who is recorded, in any record-of-rights finally published under Chapter XI or under any other law for the time being in force, as a *bajiaftidar* tenure-holder, and his successors in interest, shall be deemed to be a tenure-holder for all the purposes of this Act;
- (ii) every *bajiaftidar* who is recorded in any such record-of-rights as a *bajiaftidar* raiyat, and his successors in interest, shall be deemed to be a tenure-holder for the purposes of sections 14 to 20 and 99, and a raiyat for the purposes of all other sections of this Act; and
- (iii) every sub-proprietor shall be deemed to be a tenure-holder for the purposes of sections 14 to 20, 99, 100, and Chapter XVI, and to be a permanent tenure-holder for the purposes of section 74.

CHAPTER III

TENURE-HOLDERS.

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7. Where a tenure in a permanently-settled area has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement, except on proof—

- (a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or
- (b) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Limits of
enhancement
of rent of
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8. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(Secs. 9-11.)

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than *ten per centum* of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them, and shall have regard to—

(a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(b) the improvements (if any) made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

9. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached. Power to order gradual enhancement.

10. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced. Rent once enhanced may not be altered for fifteen years.

Other incidents of tenures.

11. A holder of a permanent tenure shall not be ejected by his land-lord, except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected: Permanent tenure-holder not liable to ejection.

Provided that, where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

(Secs. 12-15.)

Transfer and transmission of permanent tenure.

12. (1) Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property.

Saving as to resumable and non-transferable tenures.

13. Nothing in section 11 or in section 12 shall affect the right of the landlord to resume a resumable tenure, or shall validate the transfer of a tenure or portion thereof which, by the terms upon which it is held or by local custom, is not transferable.

Transfer of tenure by succession.

14. (1) In the case of every transfer of a tenure or portion of a tenure by succession, the landlord shall recognise the transfer, provided that the transferee shall pay him a fee amounting to rupees two, except in the case of a *bajiaftidar*, when the fee shall be rupee one.

(2) If, in any such case, the landlord refuses to accept the requisite fee, the transferee or his heir may deposit such fee with the Collector, and, at the same time, apply for registration of the transfer. The Collector, after giving notice to the landlord to appear and be heard, shall decide whether the applicant is the successor or not; and, if satisfied that such applicant is the successor, he shall cause the fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

(3) If an application for the registration of the transfer of a tenure or portion thereof under sub-section (1) is not made within a period of six months from the date of the transfer, and if the registration fee authorised by the said sub-section is not deposited along with the application, the transferee or his heir shall not be entitled to recover at any time after the expiry of the said period, by suit or other proceeding, any rent which may have become due to him, as the owner of such tenure or portion, between the date of the transfer and the date of the application for registration.

Right of certain tenure-holders to transfer without consent of landlord.

15. (1) The following classes of tenure-holders are entitled to transfer their tenures or portions thereof by sale, gift or exchange without the consent of their landlords:—

- (a) sub-proprietors other than *sarbarahkars*,
- (b) persons holding land which has been recorded at a settlement of land-revenue as *shikmi kharida* or *kharida jamabandi*, and
- (c) *bajiaftidars*:

Provided that a fee of rupees five shall be paid to the landlord in respect of the registration of such tenure or portion, except in the case of a *bajiaftidar*, when the fee shall be rupees two.

(Sec. 16.)

(2) If, in any such case, the landlord refuses to accept the requisite fee, the transferee or his successor in interest may deposit such fee with the Collector, and, at the same time, apply for registration of the transfer. The Collector shall thereupon cause the fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing declare that the transfer has been duly registered.

(3) If an application for the registration of the transfer of any tenure or portion thereof under sub-section (1) is not made within a period of six months from the date of the transfer, and if the registration fee authorised by the said sub-section is not deposited along with the application, the transferee or his successor in interest shall not be entitled to recover, at any time after the expiry of the said period, by suit or other proceeding, any rent which may have become due to him as the owner of such tenure or portion, between the date of the transfer and the date of the application for registration.

16. (1) In cases other than those covered by section 15, when any ^{Transfer in other cases} tenure or portion of a tenure is transferred by sale, gift or exchange, the transferee or his successor in interest shall apply to the landlord to whom the rent of the tenure or portion thereof is payable for registration of the transfer, and the landlord shall, in the absence of good and sufficient reason to the contrary, allow the registration of the transfer. The fee payable on such transfer shall be—

(a) in the case of a sale, rupees twenty-five *per centum* of the consideration money, or the fee specified in clause (b), whichever is greater, and

(b) in the case of gift or exchange, a fee six times the annual rental of the tenure or portion thereof, as the case may be, or, if rent be not payable in respect of the tenure or portion, then a fee of rupees ten.

(2) If, in any such case, the landlord accepts the fee authorized by sub-section (1), his consent to the transfer shall be deemed to have been given.

(3) If, in any such case, the landlord refuses to accept the requisite fee, the transferee or his successor in interest may deposit such fee with the Collector, and, at the same time, apply for registration of the transfer. The Collector, after giving notice to the landlord to appear and be heard, shall decide whether the tenure is transferable by custom without the consent of the landlord and whether the landlord has any good and sufficient reason to refuse his consent to the transfer; and, if the Collector finds that the tenure is so transferable, and that the landlord has

(Secs. 17-21.)

no good and sufficient reason to refuse his consent to the transfer, he shall cause the said fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

(4) If an application for the registration of the transfer of any tenure or portion thereof under sub-section (1) is not made within a period of six months from the date of the transfer, and if the registration fee authorized by the said sub-section is not deposited along with the application, the transferee or his successor in interest shall not be entitled to recover, at any time after the expiry of the said period, by suit or other proceeding, any rent which may have become due to him as the owner of such tenure or portion, between the date of the transfer and the date of the application for registration.

17. No decision of the Collector under section 14, 15 or 16 shall affect the right of the landlord or of the transferee to establish the transferability or otherwise of the tenancy by suit in the Civil Court.

18. The transfer of a portion of a tenure and the registration of the same under section 14, 15 or 16 shall not be deemed to constitute a division of the tenure. The transferee of such portion and the holder of the remainder of the tenure shall be jointly and severally liable to the landlord for the rent of the entire tenure, unless the landlord has consented, in the manner specified in section 99, to a division of the tenure or to a distribution of the rent thereof:

19. An application to the Collector under section 14, 15, 16 or 31 shall be accompanied by such fee, in addition to the fee payable to the landlord, as the Local Government may, by rule, direct.

20. If an application under section 14, 16 or 31 be disallowed, the Collector shall return the landlord's fee to the applicant.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

21. (1) A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

(a) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and

Right of suit in civil court regarding transferability.

Effect of transfer of portion of a tenure.

Fee on application under section 14, 15, 16, or 31.

Return of landlord's fee.

Incidents of holding at fixed rates.

(Secs. 22-23.)

(b) shall not be ejected by his landlord, except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

(2) Nothing in this section shall affect the right of the landlord to resume a resumable holding, or validate the transfer of a holding or portion thereof which, by the terms upon which it is held or by local custom, is not transferable.

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

22. (1) Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when this Act comes into force, have a right of occupancy in that land.

Continuance
of existing
occupancy-
rights.

(2) The exclusion from the operation of this Act, by a notification under sub-section (3) of section 1, of any area or part of an area which is constituted a Municipality under the Bengal Municipal Act, 1884, [1] shall not affect any right, obligation or liability previously acquired, incurred or accrued in reference to such area or part.

Ben. Act III
of 1884.

23. (1) Every person who, for a period of twelve years whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

Definition of
"settled
raiayat."

(2) A person shall be deemed, for the purposes of this section, to have continuously held land in a village, notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(4) Land held by two or more co-sharers as a raiyati holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(Secs. 24-26.)

(5) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

(6) If a raiyat recovers possession of land under section 98, he shall be deemed to have continued to be a settled raiyat, notwithstanding his having been out of possession more than a year.

(7) If, in any suit or other proceeding under this Act, or under any other law, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed, for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as raiyat.

Settled
raiylats to
have occu-
pancy rights.

24. (1) Every person who is a settled raiyat of a village within the meaning of section 23 shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

(2) Every person who, being a settled raiyat of a village within the meaning of section 23, held land as a raiyat in that village at any time between the tenth day of September, 1891, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

Acquisition
of occupancy
rights in an
area not
included in
a village.

25. (1) Every raiyat who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in an area which is not included in a village as defined in clause (25) of section 3, shall be deemed to have become an occupancy-raiyat in respect of that land.

(2) The holding of the father or other person from whom a raiyat inherits shall be deemed to be the holding of the raiyat within the meaning of this section.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be held to affect the terms of any written contract for the cultivation of land in the aforesaid area, entered into between a landholder and a raiyat, when it contains any express stipulation contrary thereto.

et of
of occupancy
rights by
landlord.

26. (1) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, such person shall have no right to hold the land as a tenant, but shall hold it as a proprietor or permanent tenure-holder (as the case may be); but nothing in this sub-section shall prejudicially affect the rights of any third person.

(Secs. 27-29.)

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, such person shall have no right to hold the land as a raiyat, but shall hold it as a proprietor or permanent tenure-holder, as the case may be, and shall pay to his co-sharers a fair and equitable sum for the use and occupation of the same.

(3) In determining from time to time what is a fair and equitable sum under sub-section (2), regard shall be had to the rent payable by the occupancy-raiyat at the time of the transfer and to the principles of this Act regulating the enhancement or reduction of the rents of occupancy-raiyats.

(4) A person interested in any estate, tenure, village or land, whether solely or jointly with others, as a temporary tenure-holder, *ijaradar* or farmer of rents, or as a mortgagee in possession, shall not, during the period of his lease or mortgage, acquire by purchase or otherwise a right of occupancy in any land comprised in his lease or mortgage.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as a proprietor or permanent tenure-holder, or by subsequently holding the land as a temporary tenure-holder, *ijaradar* or farmer of rents, or mortgagee.

Incidents of occupancy-right.

27. When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

28. An occupancy-raiyat shall pay rent for his holding at fair and equitable rates.

29. An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

Devolution
of occupancy-
right on
death.

30. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property :

Provided that, in any case in which, under the law of inheritance to which the raiyat is subject, his other property goes to the Crown, his right of occupancy shall be extinguished.

Transfer of
occupancy-
holding by
private sale.

31. (1) When any occupancy-holding or portion of a holding is transferred by private sale, the transferee or his successor in interest shall within two years from the date of the commencement of this Act or within one year from the date of the transfer, whichever is later, apply to the landlord to whom the rent of the holding or portion is payable for registration of the transfer. The maximum fee payable on such registration shall be a sum equal to 25 *per centum* of the consideration money or to six times the annual rent of the holding or portion thereof, whichever is greater.

Explanation.—In the case of land held on a produce rent the annual rent shall be calculated on the basis of the average rate of cash rent paid by occupancy-raiyats for similar lands in the village.

(2) If, in any such case, the landlord accepts the fee authorized by sub-section (1), his consent to the transfer and to any distribution of the rent thereby rendered necessary shall be deemed to have been given.

(3) If, in any such case, the landlord refuses to accept the requisite fee, the transferee or his successor in interest may within one month from the date of the landlord's refusal, or from the date specified in sub-section (1), whichever is later, deposit such fee with the Collector, and, at the same time, apply for registration of the transfer. The Collector, after giving notice to the landlord, to appear and be heard, shall decide whether the landlord has any good and sufficient reason to refuse his consent to the transfer; and, if the Collector finds that the landlord has no good and sufficient reason to refuse his consent to the transfer, he shall cause the said fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered. Such declaration shall have the same effect as an acceptance of the registration fee by the landlord under sub-section (2).

Explanation.—In considering whether the landlord has good and sufficient cause to refuse his consent to the transfer, the Collector shall have regard to the following circumstances:—

- (i) whether the transferee is a cultivating raiyat or is acquiring the land for the purpose of cultivation;

(Secs. 32-34.)

- (ii) whether the transferee resides within, or in the vicinity of, the village in which the holding is situated;
- (iii) whether the transfer results in the creation of unreasonably small holdings;
- (iv) whether in the case of a transfer of a portion of a holding the proposed distribution of rent is accepted by the landlord and, if not, whether it is just and proper;
- (v) whether there are any arrears of rent due in respect of the holding;
- (vi) whether the transferee is a habitual defaulter of rent or a person who for any other reasonable cause should not be made a tenant of the landlord without his consent; and
- (vii) whether there has been an understatement of the consideration money which affects the amount of the fee payable under sub-section (1).

(4) Save as provided in this section and sections 95 and 96, no transfer of an occupancy-holding or portion of a holding otherwise than by succession or by sale in execution of a decree for arrears of rent shall be valid against the landlord of the holding unless and until he has consented thereto.

(5) Nothing in this section shall apply to the transfer of an occupancy-holding or portion of a holding in a permanently-settled estate.

(6) An appeal shall lie to the Collector of the district from any order passed under sub-section (3) by an officer subordinate to him, and his order on appeal shall, subject to any order which may be passed by the Commissioner on revision, be final:

Provided that an appeal shall lie to the Commissioner from any order passed by the Collector of the district under sub-section (3) and the order of the Commissioner on appeal shall be final.

Enhancement of rent.

32. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

33. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced, except as provided by this Act.

34. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

- (a) the contract must be in writing and registered;

Presumption as to fair and equitable rent.
Restriction on enhancement of money-rent.
Enhancement of rent by contract.

(Sec. 35.)

- (b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;
- (c) the rent fixed by the contract shall not be liable to enhancement during a term of 15 years from the date of the contract:

Provided as follows:—

- (i) nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed;
- (ii) nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding;
- (iii) when a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

Enhancement
of rent by
suit.

35. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, namely:—

- (a) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same village or in neighbouring villages, and that there is no sufficient reason for his holding at so low a rate;
- (b) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;
- (c) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent;

(Secs. 36-37.)

- (d) that the productive powers of the land held by the raiyat have been increased by fluvial action.

Explanation—"Fluvial action" includes a change in the course of a river, rendering irrigation from the river practicable when it was not previously practicable.

36. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate,—

Rules as to
enhancement
on grounds
of prevailing
rate.

- (a) in determining what is the prevailing rate, the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court;
- (b) if, in the opinion of the Court, the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Order XXVI in the first Schedule to the Code of Civil Procedure, 1908, by such Revenue-officer as the Local Government may authorize in that behalf by rule made under rule 9 in the said Order;
- (c) in determining under this section the rate of rent payable by a raiyat, his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;
- (d) in ascertaining the prevailing rate of rent, the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration;
- (e) if a favourable rate has been determined under clause (c) for any description of raiyats, such rate may, if the Court thinks fit, be left out of consideration in ascertaining the prevailing rate;
- (f) if the holding is held at a lump rental, the determination of the rent to be paid may be made by ascertaining the different classes of land comprised within the holding, and applying to the area of each class the prevailing rate paid on that class within the village or neighbouring villages.

37. In any district or part of a district to which this section is extended by the Local Government by notification in the local official

What may be
taken in cer-
tain districts

(Secs. 38-39.)

to be the
"prevailing
rate."

Gazette, whenever the prevailing rate for any class of land is to be ascertained under section 35, clause (a), by an examination of the rates at which lands of a similar description and with similar advantages are held within any village or villages, the highest of such rates at which, and at rates higher than which the larger portion of those lands is held may be taken to be the prevailing rate.

Illustrations.

- (a) The rates at which land of a similar description and with similar advantages is held in a village are as follows :—

Acres.		Rs.	A.	P.
100	. . . . .	@	1	0 0
200	. . . . .	@	1	8 0
150	. . . . .	@	1	12 0
100	. . . . .	@	2	0 0
150	. . . . .	@	2	4 0
Total	. 700			

Then Rs. 2-4 is not the prevailing rate, because only 150 acres, or less than half, are held at that rate. Rupees 2 is not the prevailing rate, because 250 acres, or less than half, are held at that or a higher rate. Rupee 1-12 is the prevailing rate, because 400 acres, or more than half, are held either at this or a higher rate; and this is the highest rate at which, and at rates higher than which, more than half the land is held.

- (b) The rates at which land of a similar description and with similar advantages is held in a village are as follows :—

Acres.		Rs.	A.	P.
100	. . . . .	@	1	0 0
250	. . . . .	@	1	4 0
150	. . . . .	@	1	8 0
150	. . . . .	@	1	12 0
50	. . . . .	@	2	0 0
Total	. 700			

Then for the reasons given in *Illustration (a)*, neither Rs. 2 nor Re. 1-12 is the prevailing rate, nor is Re. 1-8 the prevailing rate, because only 350 acres (exactly half) are held at Re. 1-8 or a rate higher than Re. 1-8. In this case, Re. 1-4 is the prevailing rate, because more than half the lands are held at Re. 1-4 or higher rates, and this is the highest rate at which, and at rates higher than which, more than half the land is held.

Limit to
enhancement
of prevailing
rate.

38. When the prevailing rate has once been determined by a Revenue officer under Chapter XI or by a Revenue Court in any suit under this Act, it shall not be liable to enhancement save on the ground and to the extent specified in section 35, clause (b) and section 39.

Rules as to
enhancement
on ground
of rise in
prices.

39. Where an enhancement is claimed on the ground of a rise in prices,—

- (a) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;

(Secs. 40-43.)

- (b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison:

Provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

- (c) if, in the opinion of the Court, it is not practicable to take the decennial periods prescribed in clause (a), the Court may, in its discretion, substitute any shorter periods therefor.

40. (1) Where an enhancement is claimed on the ground of a landlord's improvement,—

Rules as to enhancement on ground of landlord's improvement.

- (a) the Court shall not grant an enhancement, unless the improvement has been registered in accordance with this Act;

- (b) in determining the amount of enhancement, the Court shall have regard to—

- (i) the increase in the productive powers of the land caused or likely to be caused by the improvement,
- (ii) the cost of the improvement,
- (iii) the cost of the cultivation required for utilizing the improvement, and
- (iv) the existing rent, and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to re-consideration in the event of the improvement not producing or ceasing to produce the estimated effect.

41. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action,—

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

- (a) the Court shall not take into account any increase which is merely temporary or casual;

- (b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not as to give the landlord more than one-half of the value of the net increase in the produce of the land.

42. Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

Enhancement by suit to be fair and equitable.

43. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be

Power to order

(Secs. 44-46.)

progressive
enhancement.

gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

Limitation of
right to bring
successive
enhancement
suits.

44. (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the tenth day of September, 1891, or if within the said period of fifteen years the rent has been commuted under section 47 or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

(2) Nothing in this section shall affect the provisions of rule 1 in Order XXIII in the first Schedule to the Code of Civil Procedure, 1908. V of 1908.

Reduction of rent.

Reduction
of rent.

45. (1) An occupancy-raiyat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise, namely:—

- (a) on the ground that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or
- (b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

Price-lists of
staple food-
crops.

46. (1) The Collector of every district shall prepare, monthly or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local Government may direct, and shall submit them to the Board of Revenue for approval or revision.

(2) The Collector may, if so directed by the Local Government, prepare for any local area like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue, for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates; and if any landlord or

(Sec. 47.)

tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the local official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The Local Government shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the local official Gazette.

(6) In any proceedings under this Chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the commencement of this Act are correct, and may presume that the prices shown in the lists prepared for any year prior to the commencement of this Act are correct, unless and until it is proved that they are incorrect.

(7) The Local Government, subject to the control of the Governor General in Council, shall make rules for determining what are to be deemed staple food-crops in any local area, and for the guidance of officers preparing price-lists under this section.

Commutation.

47. (1) Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, or partly in any of those ways and partly in cash, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

(2) The application may be made to—

(i) The Collector or Sub-divisional Officer, or

(ii) a Revenue-officer appointed by the Local Government, under the designation of Settlement-officer or Assistant Settlement-officer, for the purpose of making a survey and record-of-rights under Chapter XI, or

(iii) any other officer specially authorized in this behalf by the Local Government.

(3) On the receipt of the application, the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu

(Sec. 48.)

of paying his rent in kind or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination, the officer shall have regard to—

- (a) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity;
- (b) the average value of the rent actually received by the landlord during the preceding ten years or during any shorter period for which evidence may be available;
- (c) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges;
- (d) improvements effected by the landlord or by the occupancy-raiyat in respect of the raiyat's holding, and
- (e) the rules laid down in section 40 regarding enhancement of rent on the ground of a landlord's improvement.

(5) The order shall be in writing, and shall state the grounds on which it is made and the time from which it is to take effect.

(6) If the application is opposed, the officer shall decide whether, in all the circumstances of the case, it is reasonable to grant it, and in cases in which—

- (i) the landlord is, by physical or caste disability or on account of sex, unable to cultivate personally and is dependent for livelihood upon the share of the produce payable as rent, or
- (ii) the land has been assigned to a religious or charitable endowment and the share of the produce payable as rent is applied for the purposes of such endowment,

he shall, and in other cases he may, take into consideration the effect of commutation on the income of the landlord.

(7) If the officer refuses the application he shall record in writing his reasons for the refusal.

(8) All orders passed under this section, including an order refusing an application, shall be subject to appeal in the prescribed manner and to the prescribed officer.

Period for which commuted rents are to remain unaltered.

48. (1) Where the rent of a holding has been commuted under section 47, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration of the area of the holding, be enhanced for fifteen years; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding, or on the ground specified in

(Secs. 49-53.)

clause (a) of sub-section (1) of section 45.

(2) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (5) of section 47.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

49. This Chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats. Application of Chapter.

50. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission. Initial rent of non-occupancy-raiyat.

51. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 53: Conditions of enhancement of rent.

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

52. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely:— Grounds on which non-occupancy-raiyat may be ejected.

- (a) on the ground that he has failed to pay an arrear of rent;
- (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;
- (c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;
- (d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 53, or that the term for which he is entitled to hold at such a rent has expired.

53. (1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the raiyat an agreement to pay Conditions of ejectment on ground of refusal to

(Sec. 54.)

agree to enhance-
ment.

the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

(2) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf, for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner; and, when it has been so served, it shall, for the purposes of this section, be deemed to have been tendered.

(3) If a raiyat on whom an agreement has been served under sub-section (2) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a raiyat under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the raiyat does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in section 52, unless he has acquired a right of occupancy.

(8) If the raiyat does not agree to pay the rent so determined the Court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable, the Court shall have regard to the rent generally paid by raiyats for land of a similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

Explanation
of "admitted
to occupa-
tion."

54. Where a raiyat has been in occupation of land, and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this Chapter, notwithstanding that the lease may purport to admit him to occupation.

(Secs. 55-57.)

CHAPTER VII.

LANDS EXEMPTED FROM CHAPTERS V AND VI.

55. Notwithstanding anything contained in Chapter V, a right of occupancy shall not be acquired in, nor shall anything contained in Chapter VI apply to,—

Bar to acquisition of right of occupancy in, and to application of Chapter VI to, proprietor's private lands and certain other lands.

- (a) a proprietor's private lands, when they are held by a tenant on a lease for a term of years or on a lease from year to year,
- (b) land acquired under the Land Acquisition Act, 1894,^[1] for the Government or any Local Authority or Railway Company, or land belonging to the Government within a cantonment, while such land remains the property of the Government or of any Local Authority or Railway Company, or
- (c) land recorded or demarcated as belonging to the Government or to any Local Authority which is used for any public work, such as a road, canal or embankment, or is required for the repair or maintenance of the same, while such land continues to be so used or required.

CHAPTER VIII.

UNDER-RAIYATS.

56. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, namely:—

Limit of rent recoverable from under-raiyats.

- (a) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty *per cent.*; and
- (b) in any other case—twenty-five *per cent.*

Provided that, if the landlord be a *bajiaftidar*, the said percentages shall be calculated with reference to the average cash rent which is paid by occupancy-raiyats for similar land in the village, and not with reference to the rent which the *bajiaftidar* himself pays.

57. An under-raiyat shall not be liable to be ejected by his landlord, except—

Restriction on ejectment of under-raiya's

- (a) on the expiration of the term of a written lease; or

(Secs. 58-59.)

- (b) when holding otherwise than under a written lease, at the end of the agricultural year within which a notice to quit has been served upon him by his landlord, provided that such notice has been served upon him not less than six months before the end of the year.

CHAPTER IX.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

Rules and
presumptions
as to fixity
of rent.

58. (1) Where a tenure-holder or raiyat in a permanently-settled area, and his predecessors in interest, have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

(2) If it is proved in any suit or other proceeding under this Act or under any other law that either a tenure-holder or raiyat and his predecessors in interest have held land situated in a permanently-settled area at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

Provided that, if it is required by or under any enactment that in any local area, tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on or before a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class, in that local area unless the tenancy has been so registered.

(3) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

Presumption
as to amount
of rent and
conditions of
holding.

59. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

(Sec. 60.)

*Alteration of rent on alteration of area.***60. (1)** Every tenant shall—Alteration of
rent in re-
spect of alter-
ation in area.

- (a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which, having previously belonged to the tenure or holding, was lost by diluvion or otherwise without any reduction of the rent being made; and
- (b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

- (a) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding;
- (b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;
- (c) the length of time during which the tenancy has lasted without dispute as to rent or area; and
- (d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure; and shall not in any case fix any rent which, in the circumstances of the case, is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof;

(Secs. 61-62.)

or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

(5) When, in a suit under this section, the landlord or tenant is unable to indicate any particular land as held in excess, the rent to be added on account of the excess area may be calculated at the average rate of rent paid on all the lands of the holding, exclusive of such excess area.

(6) When, in a suit under this section, the landlord or tenant proves that, at the time the measurement on which the claim is based was made, there existed, in respect of the estate or permanent tenure or part thereof in which the tenure or holding is situate, a practice of settlement being made after measurement of the land assessed with rent, it may be presumed that the area of the tenure or holding specified in any lease or counterpart engagement, or (where there is an entry of area in a counterfoil receipt corresponding to the entry in the rent-roll) in any rent-roll relating to it, has been entered in such lease, counterpart engagement or rent-roll after measurement.

Reclamation
of waste land.

61. (1) No waste land may be reclaimed by a raiyat without the written consent of his landlord except where the land was, before such reclamation, included in the tenancy of the raiyat and he has acquired a right of occupancy in it.

(2) Where the consent of the landlord is required by sub-section (1) for the reclamation of waste land, such consent shall be deemed to have been given if, within four years from the date on which the raiyat commenced his reclamation of the land, the landlord has not made an application to the Collector for his ejectment:

Provided that this sub-section shall not apply to waste land which is not included in a village as defined in clause (25) of section 3.

(3) Waste land which has been reclaimed under sub-section (1) or sub-section (2) shall be assessable to rent according to the terms of any agreement entered into by the parties before or after the reclamation. In the absence of any such agreement, the Collector may, on the application of either of the parties, settle a fair and equitable rent for the land, and, in doing so, shall have regard to—

- (i) the provisions of section 60, and
- (ii) any local usage or arrangement between the parties which is, in his opinion, fair and equitable.

Payment of Rent.

Instalments
of rent.

62. (1) Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in two equal instalments falling due on the last day of each half of the agricultural year.

(Secs. 63-66.)

(2) Subject to agreement or established usage, a produce-rent payable by a tenant shall be payable at the time of harvest, and shall be deemed to have fallen due on the last day of the Oriya month during which the crop is harvested.

63. (1) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due. Time and place for payment of rent.

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village office, or at such other convenient place as may be appointed in that behalf by the landlord:

Provided that the Local Government may make rules, either generally or for any specified local area, authorizing a tenant to pay his rent by postal money-order.

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

64. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly. Appropriation of payments.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Receipts and Accounts.

65. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord. Tenant making payment to his landlord entitled to a receipt.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II as can be specified by the landlord at the time of payment:

Provided that the Local Government may prescribe or sanction a modified form, either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given. tor

66. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be deemed to have paid the same. Tenant entitled to a receipt.

(Sec. 67.)

statement
of account at
close of year.

entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive, within three months after the end of the year, a statement of account specifying the several particulars shown in the form of account given in Schedule II or in such other form as may be prescribed by the Local Government, either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement, containing similar particulars.

Penalties
and fine for
withholding
receipts and
statements of
account and
failing to keep
counterparts.

67. (1) If a landlord, without reasonable cause, refuses or neglects to deliver to a tenant a receipt, containing the particulars prescribed by section 65, for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount of value of that rent, as the Court thinks fit.

(2) If a landlord, without reasonable cause, refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year prescribed in section 66, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord or his agent, without reasonable cause, fails to deliver to the tenant a receipt or statement, or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, such landlord or agent, as the case may be, shall be liable to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

(4) The Collector may hold a summary inquiry under sub-section (3) either on his own motion or on information received from a Revenue officer within one year, or upon complaint of the party aggrieved made within three months from the date of failure, or upon the report of a Civil or Revenue Court made as provided in sub-section (6).

(5) Nothing in sub-sections (3) and (4) shall apply if the tenant has already instituted a suit under sub-section (1) or sub-section (2).

(6) If, in any suit or other proceeding under this Act or under any other law, the Court or presiding officer (not being the Collector) finds that any landlord or agent has failed—

(a) to deliver to a tenant a receipt in the prescribed form, or

(Secs. 68-69.)

(b) to prepare and retain a counterfoil, in the prescribed form, of a receipt delivered to a tenant as aforesaid,

such Court or officer shall inform the Collector.

(7) Where, in any case instituted under sub-section (1), the Collector discharges any landlord or agent, and is satisfied that the complaint of the tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the tenant to pay to such landlord or agent, such compensation, not exceeding fifty rupees, as the Collector thinks fit.

(8) An appeal shall lie to the Collector of the district from any order passed under sub-section (3) or sub-section (7), by an officer subordinate to him, and his order on appeal shall, subject to any order which may be passed by the Commissioner on revision, be final:

Provided that an appeal shall lie to the Commissioner from any order passed by the Collector of the district under sub-section (3) or sub-section (7), and the order of the Commissioner on appeal shall be final.

(9) Any fine imposed or compensation awarded under the section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand.

(10) For the purpose of an inquiry under this section, the Collector shall have power to summon, and enforce the attendance of, witnesses, and compel the production of documents, in the same manner as is provided in the case of a Court by the Code of Civil Procedure, 1908. [1]

68. (1) The Local Government shall cause to be prepared and kept for sale to landlords at all subdivisional offices forms of receipts, with counterfoils, and of statements of account, suitable for use under the foregoing sections.

Local Government to prepare forms of receipt and account.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

69. Where rent is due to the proprietor, manager, or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, [2] as proprietor, manager or mortgagee of that estate, and where rent is due to a sub-proprietor or tenure-holder, the receipt of the person who is—

Effect of receipt by registered proprietor, manager, mortgagee, sub-proprietor or tenure-holder.

(a) registered under section 14, 15 or 16, or under any law previously in force, as sub-proprietor or tenure-holder, or

[1] Printed in the General Acts, 1904-08, Ed. 1909, p. 141.

[2] Printed in Vol. II of this Code, p. 235.

(Sec. 70.)

(b) recorded as sub-proprietor or tenure-holder in a record-of-rights finally published under Chapter XI or under some other law for the time being in force,

or the receipt of the duly authorized agent of any such person as aforesaid,

shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered or recorded that the rent is due to any third person.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee or the registered or recorded sub-proprietor or tenure-holder.

Deposit of rent.

Application to
deposit rent
in Court.

70. (1) In any of the following cases, namely:—

- (a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;
- (b) when a tenant bound to pay money on account of rent has reason to believe owing to a tender having been refused of a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;
- (c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money and no person has been empowered to receive the rent on their behalf; or
- (d) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent,

the tenant may present, to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding, an application in writing for permission to deposit in the Court the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (a) and (b), the name of the person to whose credit the deposit is to be entered,

in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (d), the name of the person to whom the rent was last paid, and of the person or persons now claiming it;

(Secs. 71-72.)

of 1908.

shall be signed and verified, in the manner provided in rules 14 and 15 in Order VI in the first Schedule to the Code of Civil Procedure, 1908^[1] by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant;

and shall be accompanied by a fee of such amount as the Local Government may, by rule, direct.

(3) The provisions of this section shall not apply to a rent which has not fallen due prior to the date of application for deposit, nor to a tenant who has acquired his tenancy by gift, purchase or exchange, and has not been duly registered under the provisions of section 15, 16, or 31.

71. (1) If it appears to the Court to which an application is made under section 70 that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it in the prescribed form.

Receipt granted by Court for rent deposit to be a valid acquittance.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (a) and (b) of section 70, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, by the co-sharers to whom the rent is due; and

in case (d) of that section, by the person entitled to the rent.

72. (1) The Court receiving the deposit shall forthwith—

Notification of receipt of deposit.

in cases (a) and (b) of section 70, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit is to be posted at the landlord's village-office or

in case (c) of that section, cause a notice of the receipt of the deposit to be posted at the landlord's village-office or in some conspicuous place in the village in which the holding is situate; and

in case (d) of that section, cause a like notice to be served, free of charge, on every person who has reason to believe claims or is entitled to the deposit.

(2) Notices to be served under this section may, at the discretion of the Court, be served by registered post.

(Secs. 73-75.)

Payment or
refund of
deposit.

73. (1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Revenue Court as to the person so entitled.

(2) The payment may, if the Local Government so directs, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Revenue Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(4) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Arrears of Rent.

Liability to
sale for
arrears in case
of permanent
tenure-holder,
bajiaftidar,
raiyat hold-
ing at fixed
rate *chand-*
nadar or occu-
pancy-raiyat.

74. Where a tenant is a permanent tenure-holder, a *bajiaftidar*, a raiyat holding at fixed rates, a *chandnadar* or an occupancy-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

Ejectment
for arrears in
other cases.

75. (1) When an arrear of rent remains due at the end of the agricultural year from a tenant not being a permanent tenure-holder, a *bajiaftidar*, a raiyat holding at fixed rate, a *chandnadar* or an occupancy-raiyat, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent, a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon; and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

(Secs. 76-78.)

(3) The Court may, for special reasons, extend the period of fifteen days mentioned in this section.

76. An arrear of money-rent shall bear simple interest, at the rate of twelve and-a-half *per centum per annum*, from the expiration of that half of the agricultural year in which the instalment falls due to the date of payment or of the institution of the suit, whichever date is earlier.

Interest on arrears of money-rent.

77. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five *per centum* on the amount of rent decreed, as it thinks fit:

Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

Provided that,—

- (i) interest shall not be decreed when damages are awarded under this section; and
- (ii) the amount of damages awarded shall in no case be less than the amount of interest recoverable under section 76.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five *per centum* on the whole amount claimed by the plaintiff, as it thinks fit.

Produce-rents.

78. (1) Where the rent of any land is paid in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, or partly in any of those ways and partly in cash, the landlord shall not be entitled to recover rent for that land in excess of half the gross produce of the land, or the value thereof, or any interest on such rent, or to recover any arrear of such rent by suit, unless such suit is instituted before the end of the agricultural year next following that for which the rent is claimed to be due.

Recovery of produce-rent.

Explanation.—In applying the provisions of this sub-section, the Court shall estimate the value of the produce according to the rates obtaining locally at the time of harvest.

(2) Nothing in this section shall bar a suit for an arrear of rent recoverable under the law hitherto in force, provided that such suit is

(Secs. 79-80.)

be brought before the end of the first agricultural year after the commencement of this Act.

79. (1) Where rent is taken by appraisement or division of the produce or is a fixed quantity of the produce—

- (a) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or
- (b) if there is a dispute about the quantity, value or division of the produce,

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application, make the like order in any case where, in the opinion of the District or Sub-divisional Magistrate, the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected; but an order made by the Collector under this sub-section shall not prevent the execution of any order passed by the Court for the distraint of the tenant's crops.

(4) Every officer appointed by the Collector under sub-section (1) to appraise or divide the produce shall, for the purposes of the Indian Penal Code, 1860^[1] be deemed to be a public servant.

XLV of 1860.

80. (1) When a Collector appoints an officer under section 79, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made; but if either the landlord or the tenant fails to attend, either personally or by agent, he may proceed *ex parte*.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

Order for
appraising
or dividing
produce.

Procedure
where officer
appointed.

(Secs. 81-83.)

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard, and making such inquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Revenue Court; but, subject as aforesaid, his order shall be final and shall, on application to a Revenue Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

81. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce. Rights and liabilities as to possession of crop.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

Liability for rent on change of landlord or after transfer of tenure or holding.

82. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid in good faith to the landlord whose interest was so transferred, unless the transferee has, before the payment, given notice of the transfer to the tenant. Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants, published in the prescribed manner, shall be a sufficient notice for the purposes of this section.

83. When an occupancy raiyat in a permanently-settled estate transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent falling due after the transfer. Liability for rent on transfer without consent in permanently-settled estate.

(Secs. 84-86.)

*Illegal cesses, etc.**Abwab, etc.,
illegal.*

84. All impositions upon tenants, under the denomination of *abwab*, *mathat* or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

Penalty for
exaction by
landlord from
tenant of sum
in excess of
the rent
payable.

85. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent or interest lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

CHAPTER X.

MISCELLANEOUS PROVINCES AS TO LANDLORDS AND TENANTS.

Improvements.

Definition of
"Improvement."

86. (1) For the purposes of this Act, the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purposes for which it was let, and which, if not executed on the holding, is either executed directly for its benefit or is, after execution, made directly beneficial to it.

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section:—

- (a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;
- (b) the preparation of land for irrigation;
- (c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;
- (d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(Secs. 87-90.)

(e) the renewal or re-construction of any of the foregoing works, or alterations therein or additions thereto; and

(f) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(3) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

87. (1) Where a raiyat holds at fixed rates or has an occupancy-right in his holding, neither the raiyat nor his landlord, shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

Right to make improvement in case of holding at fixed rates or occupancy holding.

(2) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

88. If a question arises between the raiyat and his landlord—

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement,

Collector to decide question as to right to make improvement, etc.

the Collector may, on the application of either party, decide the question; and his decision shall be final.

89. (1) A non-occupancy-raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission in writing.

Right to make improvements in case of non-occupancy holding.

(2) A non-occupancy-raiyat who would, but for the want of his landlord's permission in writing, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made deliver or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; if the landlord is unable or neglects to comply with that request, may make the improvement himself.

90. (1) A landlord may, by application to such Revenue-officer as the Local Government may appoint, register any improvement which he has lawfully made, or which has been lawfully made at his expense, or which he has assisted a tenant in making.

Registration of landlord's improvements.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government may, by rule, direct.

(Secs. 91-92.)

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(a) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(b) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

Application
to record
evidence as
to improve-
ment.

91. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Revenue Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and tenant or any persons claiming under them.

Compensation
for raiyat's
improve-
ments.

92. (1) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat between the twenty-seventh day of June, 1892, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(5) The Local Government may, by notification in the local official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

(Secs. 93-94.)

93. (1) In estimating the compensation to be awarded under section 92 for an improvement, regard shall be had—

Principle on which compensation is to be estimated.

- (a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;
- (b) to the condition of the improvement, and the probable duration of its effects;
- (c) to the labour and capital required for the making of such an improvement;
- (d) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and
- (e) in the case of a reclamation or of the conversion of, unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an un-enhanced rent.

(2) When the amount of the compensation has been assessed the Court may, if the landlord and raiyat agree, direct that instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Acquisition of land for building and other purposes.

94. (1) The Collector may, on the application of the landlord of a holding,

Acquisition of land for building and other purposes.

and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the tenure or estate in which it is comprised, such as the use of the land for a village road, tank for drinking-water or embankment, or for any charitable, religious or educational purpose, or for the purpose of mining, manufacture, drainage or irrigation, or as building ground for any such purpose, or for access to land used or required for any such purpose,

authorise the acquisition thereof by the landlord upon such conditions as the Collector may think fit, and require the tenant to sell his interest in the holding or part to the landlord upon such terms as may be approved by the Collector, including full compensation to the tenant.

(2) If the landlord tenders to the tenant such sum as the Collector has approved under sub-section (1) as payment for any land, and the tenant refuses to receive the same, the Collector may, on the landlord depositing the said sum with the Collector, give possession of the land to the tenant in the prescribed manner.

(Secs. 95-97.)

*Sub-letting.*Restriction
on sub-
letting.

95. (1) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

(2) A sub-lease by a raiyat shall not be valid, nor shall it be admitted to registration under the Indian Registration Act, 1908^[1] if it purports to create a term exceeding nine years. XVI of 1908

(3) Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

(4) Nothing in this section shall apply to a sub-lease granted by a *bajiaftidar* raiyat.

*Usufructuary Mortgages.*Restriction
on usu-
fructuary
mortgage.

96. (1) No transfer by a raiyat of his holding or any portion thereof by usufructuary mortgage for any period, express or implied, which exceeds or might in any possible event exceed nine years shall be valid or be admitted to registration under the Indian Registration Act, 1908,^[1] unless it has been made with the express consent of his landlord. XVI of 1908

(2) Where a raiyat has, without the consent of his landlord, executed an usufructuary mortgage by an instrument registered before the commencement of this Act, such mortgage shall not be valid against the landlord for more than nine years from the commencement of this Act.

(3) Nothing in this section shall apply to a mortgage executed by a *bajiaftidar* raiyat.

Surrender and Abandonment.

Surrender.

97. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

(2) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice in writing of his intention to surrender.

(Sec. 98.)

(3) When a raiyat has surrendered his holding, the Court shall in the following cases, for the purposes of sub-section (2), presume, until the contrary is shown, that such notice was so given, namely: —

(a) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(b) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(4) The raiyat may, if he thinks fit, cause the notice to be served through the Revenue Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless the landlord is informed of the incumbrance, and the surrender is made with the consent, in writing, of the landlord and the incumbrancer.

(7) Save as provided in sub-section (6), nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

98. (1) If a non-resident raiyat, or a resident raiyat who voluntarily abandons his residence in the village, ceases to cultivate his holding either by himself or some other person, without giving notice to his landlord and without arranging for payment of his rent as it falls due, the landlord may, at any time after the expiration of the agricultural year in which the raiyat thus ceases to cultivate, enter on the holding and let it to another tenant, or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collectors office stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause a notice to be published in such manner as the Local Government may, by rule direct.

(8) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-rayat, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the raiyat

(Secs. 99-101.)

did not voluntarily abandon his holding, order recovery of possession on such terms (if any) with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of holding has been sub-let by a registered instrument, the landlord shall, before entering under this section, on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

Subdivision of tenancy.

Division of
tenancy not
binding on
landlord
without
his consent.

99. Save as provided in section 31, a division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his express consent in writing, or with that of his agent duly authorized in that behalf:

Provided that, if there is proved to have been made in any landlord's rent-roll any entry showing that any tenure or holding has been divided, or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.

Ejectionment.

No ejectionment
except in exe-
cution of
decree.

100. No tenant shall be ejected from his tenure or holding except in execution of a decree.

Measurements.

Landlord's
right to
measure

101. (1) Subject to the provisions of this section and any contract, a landlord may, by himself or by any person authorized by him in this behalf, enter on and measure all land comprised in his estate or tenure.

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases, namely:—

(a) where the area of the tenure or holding is liable, by reason of alluvion, diluvion or reclamation to vary from year to year and the rent payable depends on the area;

(Secs. 102-104.)

(b) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation;

(c) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

102. (1) Where a landlord desires to measure any land which he is entitled to measure under section 101, the Revenue Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land. Power for Court to order tenant to attend and point out boundaries

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

103. (1) Every measurement of land made by order of a Revenue Court or of a Revenue-officer in any suit or proceeding under this Act shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard. Standard of measurement.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The Local Government may, after local inquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area; and every declaration so made shall be presumed to be correct until the contrary is shown.

Managers.

104. When any dispute exists between co-owners of an estate, sub-proprietary interest or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue, Power to call upon co-owners to show cause why they should not appoint a common manager.

(a) inconvenience to the public, or

(b) injury to private rights,

the District Judge may, on the application in case (a) of the Collector and in case (b) of any person having an interest in the estate, sub-proprietary interest or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager:

(Secs. 105-108.)

Provided that a co-owner of an estate, sub-proprietary interest or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876,^[1] and if he is a co-owner of a sub-proprietary interest or tenure, unless he is registered or recorded in the manner indicated in clause (a), or clause (b) of section 69. Ben. Act VII of 1876.

Power to order them to appoint a manager if cause is not shown.

105. If the co-owners fail to show cause as aforesaid within one month after service of a notice under section 104, the District Judge may make an order directing them to appoint a common manager; and a copy of the order shall be served on any co-owner who did not appear before it was made.

Power to appoint manager if order is not obeyed.

106. If the co-owners do not, within such period, not being less than one month after the making of an order under section 105, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

(a) direct that the estate, sub-proprietary interest or tenure be managed by the Court of Wards, in any case in which the Court of Wards consents to undertake the management thereof; or

(b) in any case appoint a manager.

Power to nominate person to act in all cases under clause b) of last on.

107. The Local Government may nominate a person for any local area to manage all estates, sub-proprietary interests and tenures within that local area for which it may be necessary to appoint a manager under clause (b) of section 106; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge unless in the case of any estate the District Judge thinks fit to appoint one of the co-owners themselves as manager.

Application of the Court of Wards Act, 1879, to management by Court of Wards.

108. In any case in which the Court of Wards undertakes, under section 106, the management of an estate, sub-proprietary interest or tenure, so much of the provisions of the Court of Wards Act, 1879,^[1] as relates to the management of immovable property shall apply to the management. Ben. Act IX of 1878.

(Secs. 109-112.)

109. (1) A manager appointed under section 106 may, if the District Judge thinks fit, be remunerated by a fixed salary or a fixed percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs. Provisions applicable to manager and co-owners

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might, but for his appointment, have exercised and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 115 or under section 211.

(8) He shall be removable by the order of the District Judge and not otherwise.

(9) When the office of manager falls vacant in any manner, the District Judge may, subject to the provisions of section 107, appoint another manager in his place; and the foregoing provisions of this section shall apply to any manager so appointed.

110. When an estate, sub-proprietary interest or tenure has been placed under the management of the Court of Wards or a manager has been appointed for the same under section 106 or section 109, sub-section (9), the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights. Power to restore management to co-owners.

111. The High Court may make rules defining the powers and duties of managers under this Chapter. Power to make rule.

CHAPTER XI.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Part I.—Record-of-rights.

112. (1) The Local Government may, in any case with the previous sanction of the Governor General in Council, and may, if it thinks fit, Power to order survey and prepare

(Sec. 112.)

tion of
record-of-
rights

without such sanction in any of the cases next hereinafter mentioned, make an order directing that a survey be made and a record-of-rights be prepared, by a Revenue-officer, in respect of the lands in any local area, estate or tenure or part thereof.

(2) The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following, namely:—

(a) where—

(i) the landlord or tenants, or

(ii) a proportion of not less than one-half of the total number of landlords, or

(iii) a landlord, or a proportion of the landlords, whose interest, or the aggregate of whose interests, respectively, in the lands of the local area, estate or tenure or part thereof is not less than one-half of the total shares of all the landlords therein, or

(iv) a proportion of not less than one-fourth of the total number of tenants,

applies, or apply, for such an order, depositing, or giving security for, such amount for the payment of expenses as the Local Government directs;

(b) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally;

(c) where the local area, estate or tenure or the part thereof belongs to, or is managed by, the Government or the Court of Wards or a Manager appointed by the District Judge under section 106 or section 109, sub-section (9);

(d) where a settlement of land-revenue is being or is about to be made in respect of the local area, estate or tenure or of the part thereof.

Explanation 1.—The term “settlement of land-revenue,” as used in clause (d), includes a settlement of rents in an estate or tenure which belongs to the Government.

Explanation 2.—A superior landlord may apply for an order under this section, notwithstanding that his estate or part thereof is temporarily leased to a tenure-holder.

(3) A notification in the local official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

(Sec. 113.)

(4) The survey shall be made and the record-of-rights prepared in accordance with rules made in this behalf by the Local Government.

113. Where an order is made under section 112, the particulars to be recorded shall be specified in the order, and may include, either with-
out or in addition to other particulars, some or all of the following, namely:—

Particulars
to be
recorded.

- (a) the name of each tenant or occupant;
- (b) the class to which each tenant belongs, that is to say, whether he is a tenure-holder, *bajiaftadar*, raiyat holding at fixed rates, settled raiyat, occupancy-raiyat, non-occupancy-raiyat, under-raiyat or *chandnadar*; and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;
- (c) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier;
- (d) the name of each tenant's landlord;
- (e) the name of each proprietor in the local area or estate;
- (f) the rent payable at the time the record-of-rights is being prepared;
- (g) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise;
- (h) the rights and obligations of each tenant and landlord in respect of—
 - (i) the use by tenants of water for agricultural purposes, whether obtained from a river, *ghat*, tank or well or any other source of supply, and
 - (ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land;
- (k) the special conditions and incidents (if any) of the tenancy;
- (l) any right of way or other easement attaching to the land for which a record-of-rights is being prepared;
- (m) if the land is claimed to be held rent-free—whether or not rent is actually paid, and, if not paid, whether or not the

(Secs. 114-116.)

occupant is entitled to hold the land without payment of rent, and, if so entitled, under what authority.

Power to order survey and preparation of record-of-rights as to water.

114. The Local Government may, for the purpose of settling or averting disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes, regarding the use or passage of water.

make an order directing that a survey be made and a record-of-rights be prepared by a Revenue Officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of—

(a) the use by tenants of water for agricultural purposes whether obtained from a river, *jhil*, tank or well or any other source of supply; and

(b) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land.

Power for Revenue-officer to record particulars on application of proprietor, tenure-holder or large proportion of raiyats.

115. On the application of one or more of the proprietors or tenure-holders, or of a large proportion of the raiyats, of an estate or tenure, and on the applicant or applicants depositing or giving security for the required amount for expenses, a Revenue Officer may, subject to, and in accordance with, rules made in this behalf by the Local Government, ascertain and record all or any of the particulars specified in section 113 with respect to the estate or tenure or any part thereof.

Preliminary publication amendment, and final publication of record-of-rights

116. (1) When a draft record-of-rights has been prepared, the Revenue Officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication.

(2) When such objections have been considered and disposed of according to such rules as the Local Government may prescribe, and (if a settlement of land-revenue is being or is about to be made) the Settlement Rent Roll has been incorporated with the record under section 124, sub-section (3), the Revenue Officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(Secs. 117-118.)

(3) Separate drafts or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.

117. (1) In any suit or other proceeding in which a record-of-rights published under this Chapter, or a duly certified copy thereof or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published, unless such publication is expressly denied; and a certificate signed by the Revenue Officer, or by the Collector of any district in which the local area, estate or tenure or part thereof to which the record-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published under this Chapter, shall be conclusive evidence of such publication.

Presumption as to final publication and correctness of record-of-rights

(2) The Local Government may, by notification, declare, with regard to any specified area, that a record-of-rights has been finally published for every village included in such area; and such notification shall be conclusive evidence of such publication.

(3) Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect:

Provided that, if any entry in a record-of-rights is altered in a subsequent record-of-rights, the later entry shall be presumed to be correct until it is proved by evidence to be incorrect, but the previous entry shall be admissible as evidence of the facts existing at the time such entry was made.

Part II.—Settlement of Rents, Preparation of Settlement Rent Roll, and Disposal of Objections, in cases where a settlement of land-revenue is being or is about to be made.

118. In every case in which a settlement of land-revenue is being or is about to be made, the Revenue Officer shall, after publication of the draft of the record-of-rights under section 116, sub-section (1),—

Settlement of rents and preparation of Settlement Rent Roll when to be undertaken by Revenue Officer.

(a) settle fair and equitable rents for tenants of every class,

(b) notwithstanding anything contained in section 248, settle a fair and equitable rent for any land in respect of which he has recorded, in pursuance of clause (m) of section 113, that the occupant is not entitled to hold it without payment of rent, and

(c) prepare a Settlement Rent Roll:

Provided that the Revenue Officer shall not settle the rents of tenants of every class in an estate or tenure belonging to the Government, if it

(Secs. 119-120.)

does not appear to the Local Government to be expedient that he should do so.

Procedure for
settlement of
rents and
preparation
of Settlement
Rent Roll
under this
part.

119. (1) For the purposes of settling rents under this Part and preparing a Settlement Rent Roll, the Revenue Officer may proceed in any one or more of the following ways, or partly in one of those ways and partly in another, that is to say—

- (a) if in any case the landlord and tenant agree between themselves as to the amount of the rent fairly and equitably payable; the Revenue Officer shall satisfy himself that the rent so agreed upon is fair and equitable; and if he is so satisfied, but not otherwise, it may be settled and recorded as the fair and equitable rent;
- (b) the Revenue Officer may himself propose what he deems to be the fair and equitable rent; and if the amount so proposed is accepted, either orally or in writing, by the tenant, and if the landlord, after notice to attend, raises no objection, the rent so proposed may be settled and recorded as the fair and equitable rent;
- (c) if the circumstances are, in the opinion of the Revenue Officer, such as to make it practicable to prepare a Table of Rates showing for any local area, estate, tenure or village or part thereof, or for each class of land in any local area, estate, tenure or village or part thereof, the rate or rates of rent fairly and equitably payable by tenure-holders and raiyats and under-raiyats of each class, he may frame a Table of Rates and settle and record all or any of the rents on the basis of such rates in the manner hereinafter described;
- (d) the Revenue Officer may settle all or any of the rents by maintaining the existing rentals recorded in the record-of-rights as published under section 116, sub-section (1), or by enhancing or reducing such rentals:

Provided that, in making any such settlement, regard shall be had to the principles laid down in sections 7 to 10, 32 to 43, 45, 46, 51, 58 to 60, 234 and 247.

(2) The Settlement Rent Roll shall show the name of each landlord and of each tenant whose rent has been settled, and the amount of each such tenant's rent payable for the area shown against his name.

Contents of
Table of
Rates.

120. (1) If a Table of Rates is prepared, it shall specify—

- (a) the class or several classes of land for which, having regard to the nature of the soil, situation, means of irrigation,

(Sec. 121.)

and other like considerations, it is in the opinion of the Revenue Officer necessary or practicable to fix a rate or different rates of rent; and

- (b) the rate or rates of rent fairly and equitably payable by tenants holding land of each such class whose rent is liable to alteration.

(2) When the Revenue Officer has prepared the Table of Rates, he shall publish it in the local area, estate, tenure or village to which it relates, in the vernacular language prevailing in the district, and in the prescribed manner. Local publication of Table.

(3) Any person objecting to any entry in the Table of Rates may present a petition to the Revenue Officer within a period of one month after such publication, and the Revenue Officer shall consider any such objection and may alter or amend the Table. Revenue-officer to deal with objections.

(4) If no objection is made within the said period of one month, or where objections are made, after they have been disposed of, the Revenue Officer shall submit his proceedings to the Revenue authority empowered by rule made by the Local Government to confirm the Tables and Rent Rolls prepared under this Part (hereinafter called the "confirming authority"), with a full statement of the grounds of his proposals, and shall forward any petitions of objection which he may have received. Table to be submitted to superior Revenue authority.

(5) The confirming authority may confirm a Table submitted under sub-section (4), or may disallow the same, or may amend the same in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made, or may return the case for further inquiry. Proceedings of confirming authority.

(6) When a Table of Rates has been confirmed by the confirming authority, the order confirming it shall be conclusive evidence that the proceedings for the preparation of the Table have been duly conducted in accordance with this Act; and it may be presumed that the rates shown in the Table for tenants of each class, for each class of land, are the fair and equitable rates payable for land of that class within the area to which the Table applies. Effect of Table.

121. When a Table of Rates has been confirmed under section 120, sub-section (5), the Revenue Officer may settle all or any of the rents, and prepare the Settlement Rent Roll, on the basis of the rates shown in the Table, by calculating the rental of each tenure or each holding of a raiyat or under-raiyat on the area of such tenure or holding at the said rates: Application of Table of Rates.

(Secs. 122-125.)

Provided that the Revenue Officer shall not be bound to apply the said rates in any particular case in which he may consider it unfair or inequitable to do so.

Rules and principles to be followed in framing Table of Rates, and settling rents in accordance therewith.

122. In framing a Table of Rates under section 120, and in settling rents under section 121, the Revenue Officer shall be guided by such rules as the Local Government may make in this behalf, and shall, so far as may be, and subject to the proviso to the said section 121, have regard to the general principles of this Act regulating the enhancement or reduction of rents.

Preliminary publication and amendment of Settlement Rent Roll.

123. (1) When a Settlement Rent Roll for a local area, estate, tenure or village or part thereof has been prepared, the Revenue Officer shall cause a draft of it to be published in the prescribed manner and for the prescribed period, and shall receive and consider any objections made to any entry therein, or omission therefrom, during the period of publication, and shall dispose of such objections according to such rules as the Local Government may prescribe.

(2) The Revenue Officer may, of his own motion or on the application of any party aggrieved, at any time before a Settlement Rent Roll is submitted to the confirming authority under section 124, revise any rent entered therein :

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Final revision of Settlement Rent Roll, and incorporation of the same in the record-of-rights.

124. (1) When all objections have been disposed of under section 123, the Revenue Officer shall submit the Settlement Rent Roll to the confirming authority, with a full statement of the grounds of his proposals and a summary of the objections (if any) which he has received.

(2) The confirming authority may sanction the Settlement Rent Roll, with or without amendment, or may return it for revision :

Provided that no entry shall be amended, or omission supplied, until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(3) After sanction by the confirming authority, the Revenue Officer shall finally frame the Settlement Rent Roll, and shall incorporate it with the record-of-rights published in draft under section 116.

Appeal to, and revision by superior Revenue authorities.

125. (1) An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue Officer, prior to the final publication of the record-of-rights, on any objection made under section 120, sub-section (3), or section 123; and such appeal shall lie to such superior Revenue authority as the Local Government may, by rule, prescribe.

(Sec. 126.)

(2) The Board of Revenue may, in any case under this Part, on application or of its own motion, direct the revision of any record-of-rights, or any portion of a record-of-rights, at any time within two years from the date of the certificate of final publication, but not so as to affect any order passed by a Civil Court under section 126:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

126. (1) Any person aggrieved by an entry of a rent settled in a Settlement Rent Roll prepared under sections 119 to 124 and incorporated in a record-of-rights finally published under section 116, or by an omission to settle a rent for entry in such Settlement Rent Roll, may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

Jurisdiction of Civil Courts in matters relating to rent.

(2) Such suit must be instituted within six months from the date of the certificate of final publication of the record-of-rights, or, if an appeal has been presented to a Revenue authority under section 125, then within six months from the date of the disposal of such appeal.

(3) Such suit may be instituted on any of the following grounds, and on no others, namely:—

- (a) that the land is not liable to payment of rent;
- (b) that the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;
- (c) that the relation of landlord and tenant does not exist;
- (d) that land has been wrongly recorded as part of a particular estate, sub-proprietary interest or tenancy, or wrongly omitted from the lands of an estate, sub-proprietary interest or tenancy;
- (e) that the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging;
- (f) that the Revenue Officer has not postponed the operation of the settled rent under the provisions of section 139, proviso (a), or has wrongly fixed the date from which it is to take effect under that clause;
- (g) that the special conditions and incidents of the tenancy or any right of way or other easement attaching to the land which is the subject of the tenancy, have not, or has not, been recorded, or have, or has, been wrongly recorded.

(Secs. 127-128.)

The Secretary of State for India in Council shall not be made a defendant in any such suit, unless the Government is landlord or tenant of the land to which the aforesaid entry relates or in respect of which the aforesaid omission was made.

(4) If it appears to the Court that the entry of rent settled is incorrect, it shall, in case (a) or case (c) mentioned in sub-section (3), declare that no rent is payable, and shall in any other case settle a fair rent;

and, in any case referred to in clause (f) or clause (g) of the said sub-section (3), the Court may declare the date from which the rent settled is to take effect, or pass such order relating to the entry as it may think fit.

(5) When the Court has declared under sub-section (4) that no rent is payable, the entry to the contrary effect in the record-of-rights shall be deemed to be cancelled.

(6) In settling a fair rent under sub-section (4), the Court shall be guided by the rents of the other tenures or holdings of the same class comprised in the same Settlement Rent Roll, as settled under sections 119 to 124.

(7) Any rent settled by the Court under sub-section (4) shall be deemed to have been duly settled in place of the rent entered in the Settlement Rent Roll.

(8) Save as provided in this section, no suit shall be brought in any Civil Court in respect of the settlement of any rent or the omission to settle any rent under sections 119 to 124.

(9) When a Civil Court has passed final orders or a decree under this section, it shall notify the same to the Collector of the district who shall make a note of such orders or decree in the record-of-rights finally published under section 116, sub-section (2), and such note shall be deemed to be part of the record.

Presumptions
as to rents
settled under
sections 119
to 125.

127. Subject to the provisions of section 126, all rents settled under sections 119 to 124 and entered in a record-of-rights finally published under section 116, or settled under section 125, shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of this Act.

Part III.—Settlement of Rents and Decision of Disputes in cases where a settlement of land-revenue is not being or is not about to be made.

Settlement of
rents by
Revenue
Officer.

128. (1) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, either the landlord or the tenant applies, within three months from the date of the certificate of

(Sec. 123.)

the final publication of the record-of-rights under section 116, sub-section (2), for a settlement of rent, the Revenue Officer shall settle a fair and equitable rent in respect of the land held by the tenant.

Explanation.—A superior landlord may apply for a settlement of rent, notwithstanding that his estate or tenure or part thereof has been temporarily leased.

(2) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, the Revenue Officer has recorded, in pursuance of clause (m) of section 113, that the occupant of any land claimed to be held rent-free is not entitled to hold it without payment of rent, and either the landlord or the occupant applies, within three months from the date of the certificate of the final publication of the record-of-rights under section 116, sub-section (2), for a settlement of rent, the Revenue Officer shall settle a fair and equitable rent for the land.

(3) Every application under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in the Court-fees Act, 1870, [1] bear such stamp as the Governor General in Council may prescribe by notification in the *Gazette of India*.

(4) In settling rents under this section, the Revenue Officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Revenue Courts in increasing or reducing rents, as the case may be.

(5) The Revenue Officer may in any case under this section propose to the parties such rents as he considers fair and equitable; and the rents so proposed, if accepted orally or in writing by the parties, may be recorded as the fair rents, and shall be deemed to have been duly settled under this Act.

(6) Where the parties agree among themselves, by compromise or otherwise, as to the amount of the fair rent, the Revenue Officer shall satisfy himself that the amount agreed upon is fair and equitable, and if so satisfied, but not otherwise, he shall record the amount so agreed upon as the fair and equitable rent. If not so satisfied, he shall himself settle a fair and equitable rent as provided in sub-sections (4) and (5).

(7) An applicant for a settlement of rent under this section may not dispute any entry in, or any omission from, the finally-published record, unless he files simultaneously a plaint under section 130 for the alteration of such record, in which case the Court shall proceed to dispose of the same before dealing with the application under this section.

(Secs. 129-130.)

Decision of questions arising during the course of settlement of rents under this Part.

129. Where, in any proceedings for the settlement of rents under this Part, any of the following issues arise:—

- (a) whether the land is, or is not, liable to the payment of rent;
- (b) whether the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;
- (c) whether the relation of landlord and tenant exists;
- (d) whether the land has been wrongly recorded as part of a particular estate, sub-proprietary interest or tenancy, or wrongly omitted from the lands of an estate, sub-proprietary interest or tenancy;
- (e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging;
- (f) whether the special conditions and incidents of the tenancy, or any right of way or other easement attaching to the land, have not, or has not, been recorded, or have, or has, been wrongly recorded;

the Revenue Officer shall try and decide such issue and settle the rent under section 128 accordingly:

Provided that the Revenue Officer shall not try any issue under this section which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided, or is already being tried, by a Revenue Officer in a suit instituted before him under section 130.

Institution of suit before a Revenue Officer.

130. In proceedings under this Part, a suit may be instituted before a Revenue Officer at any time within three months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 116, by presenting a plaint on stamped paper for the decision of any dispute regarding any entry which a Revenue Officer has made in, or any omission which the said officer has made from, the record; whether such dispute be between landlord and tenant, or between landlords of the same or of neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent-free is properly so held, or as to any other question relating to the title in land or to any interest in land as between parties to the suit; and the Revenue Officer shall hear and decide the dispute:

Provided that the Revenue Officer may, subject to such rules as the Local Government may prescribe in this behalf, transfer any particular case or class of cases to a competent Civil Court for trial:

(Secs. 131-133.)

Provided also that in any suit under this section the Revenue Officer shall not try any issue which has been, or is already directly and substantially in issue between the same parties, or, between parties under whom they or any of them claim, in proceedings for the settlement of rents under this Part, where such issue has been tried and decided, or is already being tried, by a Revenue Officer under section 129.

131. (1) In all proceedings under section 128, section 129 and section 130, the Revenue Officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure, 1908,^[1] for the trial of suits; and his decision in every such proceeding shall have the force and effect of a decree of a Civil Court in a suit between the parties, and, subject to the provisions of sections 132 and 135, shall be final.

Procedure to be adopted by Revenue Officer.

V of 1908.

(2) Notwithstanding the period of limitation provided for in sections 128 and 130, the Revenue Officer may, at his discretion, permit an application under section 128, or a suit under section 130, to be amended by the addition of parties, or otherwise, at any time during the pendency of the same.

(3) A note of all rents settled under section 128 and of all decisions of issues or disputes under section 129 or section 130, and of all rents commuted under section 47 by a Revenue Officer appointed by the designation of Settlement-officer or Assistant Settlement-officer, shall be made in the record-of-rights finally published under sub-section (2) of section 116, and such note shall be deemed to be part of the record.

132. Any Revenue Officer specially empowered by the Local Government in this behalf may, on application or of his own motion, within twelve months from the making of any order or decision under section 128, section 129, section 130 or section 131, revise the same, whether it was made by himself or by any other Revenue Officer, but not so as to affect any order passed or decree made under section 135;

Revision by Revenue Officer.

Provided that no such order or decision shall be so revised if an appeal from it is pending under section 135, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

133. Any Revenue Officer specially empowered by the Local Government in this behalf may, on application or of his own motion, within twelve months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 116, correct any entry in such record-of-rights which he is satisfied has been made owing to a *bonâ fide* mistake:

Correction by Revenue Officer of mistakes in record-of-rights.

(Secs. 134-136.)

Provided that no such correction shall be made if an appeal affecting such entry is pending under section 135, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Bar to
jurisdiction
of Civil
Courts.

134. Subject to the provisions of section 135, a Civil Court shall not entertain any application or suit concerning any matter which is or has already been the subject of an application made, suit instituted or proceeding taken under sections 128 to 132.

Appeals from
decisions of
Revenue
Officers.

135. (1) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue Officers under sections 128 to 133.

(2) An appeal shall lie to the Special Judge from the decisions of a Revenue Officer under sections 128 to 133; and the provisions of the Code of Civil Procedure, 1908, relating to appeals shall, as nearly as may be, apply to all such appeals.

V of 1908.

(3) Subject to the provisions of sections 103, 104 and 107 of the Code of Civil Procedure, 1908, an appeal shall lie to the High Court from the decision of a Special Judge in any case under this section (not being a decision settling a rent), as if he were a Court subordinate to the High Court within the meaning of the said section 103: V of 1908.

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained under section 113 or settled under section 128 or section 132 of this Act.

Part IV.—Supplemental Provisions.

Power of
Revenue
Officer to
give effect to
agreement or
compromise.

136. (1) In framing a record-of-rights, and in deciding disputes, under this Chapter, the Revenue Officer shall give effect to any lawful agreement or compromise made or entered into by any landlord and his tenant,

but he shall not give effect to any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(2) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Revenue Officer shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent, not allowed by section 34 in the case of a contract, record evidence as to the rent

(Secs. 137-139.)

which was legally payable immediately before the period in respect of which the dispute arose.

(3) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Revenue Officer shall not give effect to such agreement or compromise unless and until he is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration—A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy raiyat. this affects the rights of the tenants of B. The Revenue Officer must, under sub-section (3), inquire whether B is a tenure-holder or a raiyat, as defined in Chapter II. If he finds on the evidence that B is a raiyat, he may give effect to the agreement, but shall not do so if he finds that B is a tenure-holder.

137. (1) Notwithstanding anything contained in section 136, if, in any case; while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding, a Revenue Officer specially empowered in this behalf by the Local Government may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such that, if they were embodied in a contract, they could not be enforced under this Act; and the provisions of section 144 shall apply to a rent so settled. Power of Revenue Officer to settle rents on agreement.

(2) A landlord or tenant may appeal to the Special Judge appointed under section 135 on the ground that the rent settled by the Revenue Officer, under sub-section (1), as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground.

(3) The Board of Revenue may, on application made, or of its own motion in proceeding undertaken, within one year from the date of the order, under sub-section (1), setting a rent as a fair and equitable rent, direct the revision of the rent so settled:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

138. A note of all rents settled and of all decisions of disputes, on revision or appeal under section 132, section 135, or sub-section (2) or sub-section (3) of section 137, shall be made in the record of rights finally published under sub-section (2) of section 116; and such note shall be deemed to be part of the record. Note of decisions in record.

139. When a rent is settled by a Revenue Officer under this Chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision fixing the rent or (if a settlement of land-revenue is being or is about to be made) the date of final publication of the Settlement Rent Roll: Date from which resettlement takes effect.

(Secs. 134-136.)

Provided that no such correction shall be made if an appeal affecting such entry is pending under section 135, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

134. Subject to the provisions of section 135, a Civil Court shall not entertain any application or suit concerning any matter which is or has already been the subject of an application made, suit instituted or proceeding taken under sections 128 to 132.

135. (1) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue Officers under sections 128 to 133.

(2) An appeal shall lie to the Special Judge from the decisions of a Revenue Officer under sections 128 to 133; and the provisions of the Code of Civil Procedure, 1908, relating to appeals shall, as nearly as may be, apply to all such appeals.

V of 1908.

(3) Subject to the provisions of sections 103, 104 and 107 of the Code of Civil Procedure, 1908, an appeal shall lie to the High Court from the decision of a Special Judge in any case under this section (not being a decision settling a rent), as if he were a Court subordinate to the High Court within the meaning of the said section 103:

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained under section 113 or settled under section 128 or section 132 of this Act.

Part IV.—Supplemental Provisions.

136. (1) In framing a record-of-rights, and in deciding disputes, under this Chapter, the Revenue Officer shall give effect to any lawful agreement or compromise made or entered into by any landlord and his tenant,

but he shall not give effect to any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(2) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Revenue Officer shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent, not allowed by section 34 in the case of a contract, record evidence as to the rent

Bar to
jurisdiction
of Civil
Courts.

Appeals from
decisions of
Revenue
Officers.

Power of
Revenue
Officer to
give effect to
agreement or
compromise.

(Secs. 137-139.)

which was legally payable immediately before the period in respect of which the dispute arose.

(3) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Revenue Officer shall not give effect to such agreement or compromise unless and until he is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.—*A*, a proprietor, agrees that *B*, his tenant, shall be recorded as an occupancy raiyat, this affects the rights of the tenants of *B*. The Revenue Officer must, under sub-section (3), inquire whether *B* is a tenure-holder or a raiyat, as defined in Chapter II. If he finds on the evidence that *B* is a raiyat, he may give effect to the agreement, but shall not do so if he finds that *B* is a tenure-holder.

137. (1) Notwithstanding anything contained in section 136, if, in any case; while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding, a Revenue Officer specially empowered in this behalf by the Local Government may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent; although the terms of the agreement are such that, if they were embodied in a contract, they could not be enforced under this Act; and the provisions of section 144 shall apply to a rent so settled.

Power of
Revenue
Officer
to settle rents
on agreement.

(2) A landlord or tenant may appeal to the Special Judge appointed under section 135 on the ground that the rent settled by the Revenue Officer, under sub-section (1), as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground.

(3) The Board of Revenue may, on application made, or of its own motion in proceeding undertaken, within one year from the date of the order, under sub-section (1), setting a rent as a fair and equitable rent, direct the revision of the rent so settled:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the—

(Secs. 144-145.)

(b) power, when settling rents, to reduce rents if, in the opinion of the officer, the maintenance of existing rents would, on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exerciseable within a specified area either generally or with reference to specified cases or classes of cases.

(3) A settlement of rents under this section shall be made in the manner provided by sections 118 to 127.

When the Local Government takes any action under this section, the settlement-record prepared by the Revenue Officer shall not take effect until it has been finally confirmed by the Governor General in Council, and the revision, by direction of the Board of Revenue under sub-section (2) of section 125, of a record-of-rights, or any portion of a record-of-rights, prepared under this section, shall be subject to like confirmation by the Governor General in Council.

Period for
which rents
as settled are
to remain
unaltered.

144. (1) When the rent of a tenure or holding is settled under this Chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding or the holding of an under-raiyat having occupancy rights, for fifteen years, and, in the case of a non-occupancy-holding or the holding of an under-raiyat not having occupancy rights, for five years; and no such rent shall be reduced within the periods aforesaid, save on the ground of alteration in the area of the holding or on the ground specified in clause (a) of sub-section (1) of section 45.

(2) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

Expenses of
proceedings
under
Chapter.

145. (1) When the preparation of a record-of-rights has been directed or undertaken under this Chapter, in any case except where a settlement of land-revenue is being or is about to be made, the expenses incurred in carrying out the provisions of this Chapter in any local area, estate, tenure or part thereof (including expenses that may be incurred at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration of boundary marks and other survey marks erected for the purpose of carrying out the provisions of this Chapter), or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part, in such proportions, and in such instalments (if any), as the Local Government, having regard to all the circumstances, may determine.

(Secs. 146-149.)

(2) The estimated amount of the expenses likely to be incurred for the maintenance, repair or restoration of boundary marks for a period not exceeding fifteen years, or such part of such amount as the Local Government may direct, may be recovered in advance in the same manner as if such expenses had been already incurred.

(3) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.

(4) The cost of preparing copies of survey maps and records-of-rights under this Chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this Chapter.

Explanation.—The word “tenure” in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

146. When the particulars mentioned in section 113, clause (b), have been recorded under this Chapter in respect of any tenancy, the presumption under section 58 shall not thereafter apply to that tenancy.

as to fixity of rent not to apply where record-of-rights has been prepared.

147. In the demarcation of village boundaries for the purpose of making a survey and preparing a record-of-rights under this Chapter, a Revenue Officer shall, so far as is possible, and subject to the provisions of the Bengal Survey Act, 1875, preserve, as the unit of survey and record, the area contained within the exterior boundaries of the village maps of the revenue survey (if any);

Demarcation of village boundaries.

and, where village maps prepared at a previous revenue survey exist, he shall not, without the sanction of the Board of Revenue, adopt any other area as such unit.

148. All records, published, whether in draft or final form, before the fifth day of November, 1898, under section 105 of the Bengal Tenancy Act, 1885, as originally passed, shall be deemed to have been duly published.

publication of certain part of record.

149. Every settlement of rent or decision of a dispute by a Revenue Officer before the fifth day of November, 1898, under section 104 or section 106 of the Bengal Tenancy Act, 1885, as originally passed, in respect of which no appeal was, before that date, preferred to the Special Judge appointed under section 108 of that Act, as originally passed, shall have the force and effect of a decree of a Civil Court in a suit between the parties, and shall be final.

Effect of settlements of rent and decisions by Revenue Officers made before the 5th November, 1898.

Ben. Act V of 1875.

VIII of 1885.

VIII of 1885.

(Secs. 150-153.)

CHAPTER XII.

RECORD OF PROPRIETORS' PRIVATE LANDS.

power of
Government
to order
survey and
record of
proprietors'
private lands.

150. The Local Government may make an order directing a Revenue Officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands.

power for
Revenue-
Officer to
record
private land
on applica-
tion of
proprietor or
tenant.

151. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue Officer may, subject to, and in accordance with, rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Procedure for
recording
private land.

152. When a Revenue Officer proceeds under either section 150 or section 151, the provisions of sections 116, 117, 130, 131, 132, 134 and 135 shall apply.

General rules
for determin-
ation of pro-
prietors' pri-
vate lands.

153. (1) Except in estates of the class referred to in section 154, the Revenue Officer shall record as a proprietor's private land—

(a) land which is proved to have been cultivated as *nij-jote*, *khamar* or *khudkast* by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the commencement of this Act, and

(b) cultivated land which is recognized by village usage as proprietor's *nij-jote*, *khamar* or *khudkast*.

(2) In determining whether any other land in any such estate ought to be recorded as a proprietor's private land, the officer shall have regard to local custom or usage, and to the question whether the land was before the twenty-first day of August, 1906, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) Notwithstanding anything contained in any agreement or compromise, or in any decree which is proved to his satisfaction to have been obtained by collusion or fraud, a Revenue Officer shall not record any land in any such estate as a proprietor's private land unless it is proved to be such by satisfactory evidence of the nature described in sub-section (1) or sub-section (2).

(Secs. 154-155.)

(4) If any question arises in any Court as to whether land in any such estate is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-Officers.

VIII of 1885. 154. (1) In temporarily-settled estates for which a record-of-rights has been prepared and finally published under Chapter X of the Bengal Tenancy Act, 1885, between the years 1891 and 1900 inclusive, and again between the years 1906 and 1912 inclusive, a proprietor's private land shall include—

Special rules for determination of proprietors' private lands in temporarily-settled estates.

(a) land which has been recorded as *nij-jote* in the record-of-rights prepared between the years 1906 and 1912, and

(b) land recorded as the *nij-chas* of a proprietor or sub-proprietor [other than a sub-proprietor referred to in sub-clause (i) of clause (21) of section 3] in the record-of-rights prepared between the years 1891 and 1900, which has again been recorded as his *nij-chas* in the record-of-rights prepared between the years 1906 and 1912.

(2) Any land, recorded as *nij-chas* in a record-of-rights finally published between the years 1906 and 1912, which falls within the category of proprietor's private land under the provisions of clause (b) of sub-section (1), shall be deemed to have become proprietor's private land with effect from the date of the final publication of such record.

(3) No land in a temporarily-settled estate which is not covered by sub-section (1) shall be held to be a proprietor's private land.

CHAPTER XIII.

DISTRAINT.

155. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, recover the arrear under the provisions of this Chapter, by distraining, while in the possession of the cultivator,—

Cases in which distraint may be made.

(1) any crops or other products of the earth standing or ungathered on the holding; and

(2) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding or on a threshing-floor or

(Sec. 156.)

place for treading out grain, or the like, whether in the fields or within a homestead:

Provided that no distraint shall be made—

Ben. Act VII
of 1876.

- (i) by a proprietor or manager, as defined in the Land Registration Act, 1876,^[1] or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under that Act; or
- (ii) by a sub-proprietor, *bajiaftidar*, or tenure-holder, unless his name and the extent of his interest in the land in respect of which the arrear is due have been—
 - (a) registered under section 14, 15 or 16, or under any law previously in force, or
 - (b) recorded in a record-of-rights finally published under Chapter XI or under some other law for the time being in force; or
- (iii) by an agent employed in the collection of rent, unless he is expressly authorized by power of attorney in that behalf; or
- (iv) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or
- (v) where the holding or any part of the holding of a raiyat has been sub-let with the written consent of the landlord—in respect of the produce of such holding or part; or
- (vi) where the holding or any part of the holding of a *bajiaftidar* raiyat has been sub-let—in respect of the produce of such holding or part.

156. (1) The distrainer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due and the costs incurred in making the distraint, with a notice stating the grounds on which the distraint is made and containing also the following particulars, namely:—

- (a) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;

(Secs. 157-158.)

- (b) the name of the tenant;
- (c) the period in respect of which the arrear is claimed;
- (d) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract or proceedings, as the case may be, under which that amount is payable;
- (e) the nature and approximate value of the produce to be distrained;
- (f) the place where it is to be found, or such other particulars as may suffice for its identification; and
- (g) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(2) The said notice shall be signed and verified in the manner provided in rules 14 and 15 in Order VI in the first Schedule to the Code of Civil Procedure, 1908.

(3) Where the distrainer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and notice on that person likewise.

(4) The demand and notice shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the distrainer shall affix copies of the demand and notice on a conspicuous part of the outside of the house in which he usually resides.

157. (1) Unless the demand, with all costs of the distraint, be immediately paid or tendered, the distrainer may distrain property referred to in section 155 to such value as may be expected to meet such demand and costs.

Right to
distrain
after deliver-
ing a list of
property;
to owner.

(2) Before seizing any property, the distrainer shall prepare a list or description thereof, and shall deliver a copy of the list to the owner of the property, or, if he is absent, shall affix it at his usual place of residence.

158. (1) A distraint under this Chapter shall not prevent any person from reaping, gathering or storing any produce or doing any other act necessary for its due preservation.

Right to
reap, etc.,
produce.

(2) If the person entitled to do so fails to do so at the proper time, the distrainer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some

(Secs. 159-161.)

other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(2) In either case the distrained property shall remain in the charge of the distrainer or of some other person appointed by him in this behalf:

Assistance of
public officer
in making
distrain.

159. If a distrainer is opposed, or apprehends resistance, and desires to obtain the assistance of a public officer, he may apply to the Collector; and the Collector may, if he thinks it necessary to do so, depute an officer to support the distrainer in making the distrain.

Application
to public
officer
for sale.

160. (1) Within five days from the time of the storing of any distrained crops or products, or, if the crops or products do not, from their nature, admit of being stored, then within five days from the time of making the distrain, the distrainer shall apply for sale of the same to such officer, not below the rank of Kanungo, as the Local Government may prescribe.

(2) The said application shall be in writing, shall contain an inventory or description of the property distrained, and shall state—

- (a) the name of the defaulter, and his place of residence;
- (b) the amount due;
- (c) the date of the distrain; and
- (d) the place in which the distrained property is deposited;

and shall be accompanied by the sum required for the service of a notice upon the defaulter under clause (b) of sub-section (1) of section 161.

Procedure on
receipt of
such applica-
tion.

161. (1) When any officer referred to in section 160, sub-section (1), receives an application under that section, he shall forthwith—

- (a) send a copy of the application to the Collector;
- (b) serve a notice, in the prescribed form, on the person whose property has been distrained, requiring him either to pay the amount demanded or to institute a suit to contest the demand of the distrainer before the Collector within the period of fifteen days from the receipt of the notice;
- (c) send to the Collector, for the purpose of being put up in his office, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and
- (d) deliver a copy of the said proclamation to the peon charged with the service of the said notice, to be put up by him in the place where the distrained property is deposited.

(2) The said proclamation shall contain a description of the distrained property, and shall state the demand for which the property is to be sold and the place where the sale is to be held.

(Secs. 162-166.)

162. (1) If a suit is instituted before the Collector in pursuance of the notice referred to in clause (b) of sub-section (1) of section 161, the Collector shall send to the officer referred to in sub-section (1) of section 160, or, if so requested, shall deliver to the owner of the distrained property, a certificate of the institution of the suit. Suspension of sale when suit instituted.

(2) A person whose property has been distrained under this Chapter may, immediately after the distraint and before an application is made under sub-section (1) of section 160, institute a suit to contest the demand of the distrainer; and the Collector shall thereupon proceed as provided in sub-section (1).

(3) When a certificate under sub-section (1) or sub-section (2) is received by or presented to an officer referred to in section 160, sub-section (1) he shall suspend further proceedings in regard to the sale of the distrained property, pending the decision of the suit.

163. (1) When any person whose property has been distrained has instituted a suit to contest the demand of the distrainer, he may, at any time, execute a bond with security binding himself to pay whatever sum may be adjudged in the suit to be due from him, with interest and costs. Withdrawal of distraint when security given for payment of any sum that may be decreed

(2) When such a bond is executed, the Collector shall give to the said person a certificate to that effect, or, if so requested, shall serve the distrainer with notice that such a certificate has been given; and upon such certificate being presented to the distrainer by the said person, or served on the distrainer by the Collector, the property shall be released from distraint.

164. On the expiration of the period fixed in the proclamation of sale, the officer referred to in section 160, sub-section (1), shall— Sale when to be made.

(a) if a certificate under section 162 of the institution of a suit to contest the demand of the distrainer has not been received by or presented to him,

(b) if a certificate has not been given under section 163, and

(c) if the said demand, with such costs of the distraint as are allowed by him, be not paid in full,

proceed to sell the property, or such part thereof as it may be necessary to sell in order to realise the said demand and costs.

165. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the officer holding the sale is of opinion that it is likely to sell there to better advantage. Place of sale.

166. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing. The produce may be sold standing.

(Secs. 167-171.)

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land, by himself or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

(3) In every case referred to in sub-section (2), the distraint shall be made at least twenty days before the time when the crops or products or any part thereof would be fit for reaping or gathering.

Manner of
sale.

167. The property shall be sold by public auction, in one or more lots as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

Postpone-
ment of sale.

168. If, on the property being put up for sale a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorized to act on his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

Payment of
purchase-
money.

169. The price of every lot shall be paid at the time of sale or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

Certificate to
be given to
purchaser.

170. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and stating the price paid.

Application
of proceeds
of sale.

171. (1) From the proceeds of every sale of distrained property the officer holding the sale shall make a deduction at the rate of one anna in the rupee as a charge for the expenses of the sale, and shall send the amount to the Collector for credit to the Government.

(2) He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distraint and of the issue of the notice and proclamation of sale required by section 161, to such amount as, after examination of the statement of expenses furnished by the distrainer, he may think proper to allow.

(3) The remainder shall be applied to the discharge of the arrear for which the distraint was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

(Secs. 172-178.)

172. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Certain persons may not purchase.

173. (1) If at any time after a distraint has been made under this Chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property, where he is not the defaulter, tenders payment of the amount specified in the demand served under section 156, with all costs which may have been incurred after the service of the demand, the distrainer shall receive such payment and shall grant a receipt for the same, and the distraint shall forthwith be withdrawn.

Procedure where demand is paid before the sale

(2) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

174. (1) When an inferior tenant, on his property being lawfully distrained under this Chapter for the default of a superior tenant, makes any payment under section 173, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on, until the defaulter is reached.

Amount paid by under-tenant for his lessor may be deducted from rent.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under section 173 to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

175. When land is sub-let and any conflict arises under this Chapter between the rights of a superior landlord and an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Conflict between rights of superior and inferior landlords

176. All officers referred to in section 160, sub-section (1), shall bring to the notice of the Collector any material irregularity committed by distrainers under colour of this Act.

Report of irregularities

177. If, in any case, on proceeding to hold a sale of property, any such officer finds that the owner of the property has not received due notice of the distraint and intended sale, he shall postpone the sale and report the case to the Collector; and the Collector shall direct the issue of another notice and proclamation of sale under section 161, or shall pass such other order as he may think proper.

Postponement of sale where due notice not given.

178. When an officer referred to in section 160, sub-section (1), has proceeded to any place for the purpose of holding a sale, and no sale takes place, either—

Charge to be made for expenses when no sale takes place.

(a) for the reason stated in section 177, or

(Secs. 179-182.)

(b) because the demand of the distrainer has been previously satisfied, and no intimation of such satisfaction was given by the distrainer to the said officer,

a charge of one anna in the rupee shall be leviable on account of expenses, and shall be calculated on the estimated value of the distrained property:

Provided that such charge shall in no case exceed ten rupees.

Charge for expenses by whom to be paid.

179. (1) If the demand of the distrainer is not satisfied until the day fixed for the sale, the charge for expenses, referred to in section 171, sub-section (1), and section 178, shall be paid by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary.

(2) In every other case the said charge shall be paid by the distrainer, and may be recovered by attachment and sale of the property of the distrainer under the warrant of the Collector.

Control by Collector.

180. (1) All proceedings under this Chapter by officers referred to in section 160, sub-section (1), shall be subject to revision by the Collector.

(2) The Collector may, with the sanction of the Board of Revenue, direct any such officer to submit periodical reports of his proceedings under this Chapter.

Procedure in suit to contest demand of distrainer.

181. (1) In all suits instituted to contest a demand of a distrainer, the distrainer must prove the arrear in the same manner as if he had himself brought a suit therefor.

(2) If the demand or any part thereof is found to be due, the Collector shall make a decree for the amount in favour of the distrainer.

Sale of distrained property in execution of decree.

182. (1) If, in any suit to contest the demand of a distrainer the demand or any portion thereof is adjudged to be due, and if a bond has not been executed under section 163, the Collector shall send an order to the officer referred to in section 160, sub-section (1) authorizing the sale of the distrained property.

(2) If the distrainer applies to the said officer, within five days from the receipt of such order, for the sale of the said property, such officer shall—

(a) send to the Collector, for the purpose of being put up in his office, a proclamation fixing a day for the sale of the property, which shall not be less than five or more than ten days from the date of the proclamation, and

(b) deliver a copy of the proclamation to a peon, to be put up by him in the place where the property is deposited.

(Secs. 183-186.)

(3) Sub-section (2) of section 161 shall apply to the said proclamation.

(4) If, on the expiration of the period fixed in the said proclamation, the amount adjudged to be due and the costs of the distraint be not paid, the said officer shall proceed to sell the property or such part thereof as it may be necessary to sell in order to realise such amount and cost.

183. If, when a sale has been made in pursuance of section 198, any balance remains due to the distrainer, the same may be recovered by proceeding, under the decree, against the person of the judgment-debtor and against any of his property. Further proceedings in execution of decree.

184. In any suit instituted to contest the demand of a distrainer, if the Collector considers that the distraint was made vexatiously or without sufficient grounds, he shall direct the release of the distrained property and may award to the plaintiff such damages as he thinks fit. Procedure where Collector considers distraint vexatious or groundless.

185. (1) If any person claims as his own, property which has been distrained for arrears of rent alleged to be due from another person, he may institute a suit before the Collector against the distrainer and such other person, to try the right to the property; and the provisions of this Act as to suits to contest the demand of a distrainer shall, as far as may be, apply to such suit. Suit by person claiming property distrained for rent due by another.

(2) When any such suit is instituted, the property may be released upon security being given up to the limit of the value of the property.

(3) If the claim is dismissed, the Collector shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

(4) If the claim is upheld, the Collector shall decree the release of the distrained property, with costs and such damages (if any) as he thinks fit.

186. The right of a landlord to distrain property under this Chapter shall not be barred by— Right of distraint to prevail over other claims.

(a) any claim to such property, made by any other person, or

(b) any order issued by any Court for the attachment or sale of such property:

Provided that, when any such property is sold under this Chapter after an order for the attachment or sale thereof has been issued by any Court, the surplus proceeds of the sale shall not be paid under section 171 to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

(Secs. 187-189.)

Procedure if
distrainer's
right to dis-
train be dis-
puted.

187. If, in any case in which property has been distrained for an arrear of rent and a suit has been instituted before the Collector to contest the demand, the right to distrain for such arrear is claimed by or on behalf of any person other than the distrainer, on the ground of such other person being actually and in good faith in the receipt of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt of the rent by such other person before and up to the time of the commencement of the suit shall be inquired into, and the suit shall be decided according to the result of the inquiry:

Provided that the decision of the Collector shall not affect the right of either party who may have a legal title to the rent of the land, to establish his title by suit in the Civil Court if instituted within one year from the date of that decision.

Suit for
damages
by person
prevented
from suing
in time
to save his
property from
sale.

188. If any person, whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from instituting a suit to contest the demand or to try the right to the property, as the case may be, within the period allowed by section 161 or section 187, as the case may be, and if his property is in consequence brought to sale, he may institute a suit before the Collector, within three months from the date of the occurrence of the cause of action, to recover damages for the illegal distraint and sale of his property.

Suit for
damages
for wrongful
acts of
authorized
distrainer.

189. (1) In any of the following cases, namely:—

- (a) if any person authorized by this Chapter to distrain property makes any distraint or sale, or causes any sale to be made, otherwise than in accordance with the provisions of this Chapter, or
- (b) if any distrained property is lost, damaged, or destroyed by reason of the distrainer not having taken proper precaution for the due keeping and preservation thereof, or
- (c) if a distraint is not immediately withdrawn as required by any provision of this Chapter,

the owner of the property may institute a suit before the Collector within three months from the date of the occurrence of the cause of action, to recover damages for any injury which he may have thereby sustained.

(2) If any illegal act is committed by any agent under colour of the exercise of the powers of distraint conferred by this Chapter, the person employing such agent shall be liable, as well as the agent himself, for any damages accruing by reason of such act.

(Secs. 190-193.)

190. If any person not authorized by this Chapter to distrain property distrains or sells or causes to be sold any property under colour of this Chapter, the owner of the property may institute a suit before the Collector, within three months from the date of the occurrence of the cause of action, to recover damages from such person for any injury which he may have thereby sustained;

and such damages may be awarded in addition to any penalty imposed in pursuance of section 240.

191. The Local Government may make rules for regulating the procedure in all cases under this Chapter.

CHAPTER XIV.

JUDICIAL PROCEDURE.

192. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare that any portions of the Code of Civil Procedure, 1908, [1] which are not expressly made applicable by this Act shall not apply to suits and other proceedings in Revenue Courts, or shall apply to them with such modifications as the Local Government, with the like sanction, may prescribe.

(2) Subject to any notifications so issued, and subject also to the other provisions of this Act, the Code of Civil Procedure, 1908, [1] shall apply to all such suits and other proceedings.

193. The following suits and applications shall be cognizable by the Collector, and shall be instituted and tried or heard under the provisions of this Act, and shall not be cognizable in any other Court except as provided in this Act, namely:—

- (a) all suits and applications under any portion of this Act other than Chapter XI, and
- (b) all suits, by landlords and others in receipt of the rent of land, against any agents employed by them in the management of land or the collection of rents, or against sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession.

(Secs. 194-196.)

Special register of suits.

194. The Local Government may direct that all suits, or any specified class of suits, under this Act shall be registered, not in the register of civil suits kept under the Code of Civil Procedure, 1908,^[1] but in such V of 1908. other registers as it may prescribe.

Successive rent suits.

195. Subject to the provisions of rule 1 in Order XXIII in the first Schedule to the Code of Civil Procedure, 1908, where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit. V of 1908.

Agreements and compromises.

196. (1) The provisions of rule 3 in Order XXIII in the first Schedule to the Code of Civil Procedure, 1908, shall not apply to any suit V of 1908 under this Act.

(2) If any suit under this Act is adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfies the plaintiff in respect to the whole or any part of the matter of the suit, the Court shall pass a decree in accordance with such agreement, compromise or satisfaction, so far as it relates to the suit:

Provided that no decree shall be passed in accordance with any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(3) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Court shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent, not allowed by section 34 in the case of a contract, record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

(4) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Court shall not pass a decree in accordance with such agreement or compromise unless and until it is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.—A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy-raiyat: this affects the rights of the tenants of B. The Court must, under sub-section (4), inquire whether B is a tenure-holder or a raiyat as defined in Chapter II. If the Court finds on the evidence that B is a raiyat, it may pass a decree in accordance with the agreement, but shall not do so if it finds that B is a tenure-holder.

(5) A decree passed in accordance with any lawful agreement, compromise or satisfaction shall be final so far as it relates to so much of the subject-matter of the suit as is dealt with by such agreement, compromise or satisfaction.

(Secs. 197-198.)

197. In all areas for which a record-of-rights has been finally published under Chapter XI or under any other law for the time being in force, a Revenue Court shall, in all suits under this Act, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect; and, when a Revenue Court passes a decree at variance with such entries, it shall record its reasons for so doing.

Regard to be had by Court to entries in record-of-rights and Land Records.

198. The following rules shall apply to suits for the recovery of rent:—

Procedure in rent suit.

(a) sections 68 to 72 of, and rules 1 to 13 in, Order XI and rule 83 in Order XXI in the first Schedule to, the Code of Civil Procedure, 1908, [1] shall not apply to any such suit;

(b) the plaint shall contain, in addition to the particulars specified in rules 1 to 6 in Order VII in the said Schedule, a statement of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof, a description sufficient for identification;

(c) where the suit is for the rent of land situated within an area for which a record-of-rights has been finally published under Chapter XI or under any other law for the time being in force, the plaint shall further contain—

(1) in the case of a holding—a statement of the plots, area and rental of the tenancy according to the record-of-rights, and

(2) in other cases—a description of the tenancy, sufficient for its identification, taken from the record-of-rights,

unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such statement or extract:

Provided that, in all cases in which the Court admits a plaint which does not contain such statement or description, the Court shall, and, in any other case, the Court may, require the Collector to supply, without payment of fee, a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy;

(Sec. 198.)

- (d) where an alteration has been made in the area of the tenancy since the record-of-rights was finally published, the plaint shall further contain a statement of the rental of the original tenancy according to the record-of-rights, together with a statement showing how the amount of rent claimed in the suit has been computed;
- (e) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only;
- (f) the service of the summons may, if the Local Government, by rule, either generally, or specially for any local area, so directs, be effected by post, either in addition to, or in substitution for, any other mode of service;
- (g) a written statement shall not be filed without the leave of the Court;
- (h) the rules in rule 13 in Order XVIII in the first Schedule to the Code of Civil Procedure, 1908, for recording the evidence V of 1908. of witnesses shall apply, whether an appeal is allowed or not;
- (i) when any account-books, rent-rolls, collection-papers, measurement-papers or maps have been produced by the landlord before any Court, and have been admitted in evidence in a suit pending therein, copies of, or extracts from, such documents, certified by a duly authorized officer of such Court to be true copies or extracts, may, with the permission of the Court, be substituted on the record for the originals, which may then be returned to the landlord;
and thereafter copies and extracts, so certified, may be admitted in evidence in any other suit instituted in the same or any other Court, unless the Court before which they are produced sees fit to require the production of the originals;
- (j) the Court may, when passing the decree, order, on the oral application of the decree-holder, the execution thereof, unless it is a decree for ejectment for arrears;
- (k) notwithstanding anything contained in rule 16 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908, V of 1908. an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree, unless the landlord's interests in the land has become and is vested in him.

(Secs. 199-203.)

199. Where a co-sharer landlord, who has instituted a suit to recover the rent due to all the co-sharer landlords in respect of an entire tenure or holding, and has made all the remaining co-sharers parties defendant to the suit, is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant, or of the co-sharer landlords defendant to the suit, to furnish him with correct information on these points, or on either of them.

Suit by co-sharer landlord for arrears of rent.

such plaintiff co-sharer landlord shall be entitled to proceed with the suit for his share only of the rent;

and a decree obtained by him in a suit so framed shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.

200. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment into Court of rent admitted to be due to third person.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person, and shall by the notice require him to appear before it on a specified date, and after taking evidence (if necessary) shall pass orders

(3) If the plea is allowed, an order shall be made for payment to the third party, and, if it is not allowed, an order shall be made for payment to the plaintiff.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3), or to present an appeal under section 204.

201. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment into Court of rent admitted to be due to landlord.

202. When a defendant is liable to pay money into Court under section 200 or section 201, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

Provisions as to payment of portion of money.

203. When a defendant pays money into Court under section 200 or section 201, the Court shall give the defendant a receipt; and the receipt

Court to grant receipt.

(*Sec. 198.*)

- (d) where an alteration has been made in the area of the tenancy since the record-of-rights was finally published, the plaint shall further contain a statement of the rental of the original tenancy according to the record-of-rights, together with a statement showing how the amount of rent claimed in the suit has been computed;
- (e) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only;
- (f) the service of the summons may, if the Local Government, by rule, either generally, or specially for any local area, so directs, be effected by post, either in addition to, or in substitution for, any other mode of service;
- (g) a written statement shall not be filed without the leave of the Court;
- (h) the rules in rule 13 in Order XVIII in the first Schedule to the Code of Civil Procedure, 1908, for recording the evidence V of 1908. of witnesses shall apply, whether an appeal is allowed or not;
- (i) when any account-books, rent-rolls, collection-papers, measurement-papers or maps have been produced by the landlord before any Court, and have been admitted in evidence in a suit pending therein, copies of, or extracts from, such documents, certified by a duly authorized officer of such Court to be true copies or extracts, may, with the permission of the Court, be substituted on the record for the originals, which may then be returned to the landlord;
and thereafter copies and extracts, so certified, may be admitted in evidence in any other suit instituted in the same or any other Court, unless the Court before which they are produced sees fit to require the production of the originals;
- (j) the Court may, when passing the decree, order, on the oral application of the decree-holder, the execution thereof, unless it is a decree for ejectment for arrears;
- (k) notwithstanding anything contained in rule 16 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908, V of 1908. an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree, unless the landlord's interests in the land has become and is vested in him.

(Secs. 205-207.)

passed a decree or order to which this section applies, if it appears that such officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and the Collector may pass such order as he thinks fit.

Explanation.—A question as to the regularity of the proceedings in publishing or conducting a sale in execution of a decree for arrears of rent is not a question relating to title to land or to some interest in land as between parties to the suit.

205. Every application for an order under rule 13 in Order IX in the first Schedule to the Code of Civil Procedure, 1908,^[1] to set aside a decree passed *ex parte*, or for a review of judgment, under section 114 of the said Code, in a suit under this Act, shall contain a statement of the injury sustained by the applicant by reason of the decree or judgment; and no such application shall be admitted—

(a) unless the applicant has, at or before the time when the application is admitted, deposited in the Court to which the application is presented the amount, if any, which he admits to be due from him to the decree-holder, or such amount as the Court may, for reasons to be recorded by it in writing, direct; or

(b) unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded by it in writing, that no such deposit is necessary.

206. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

207. (1) A suit for the ejectment of a tenant, on the ground—

(a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

Relief against forfeitures.

(Sec. 208.)

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

208. The following rules shall apply in the case of every raiyat ejected from a holding:—

Rights of
ejected
raiylats
in respect of
crops and
land pre-
pared for
sowing.

- (a) when the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment;
- (b) when the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value;
- (c) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the land-

(Secs. 209-210.)

lord for his ejectment, he has cultivated or prepared the land contrary to local usage;

- (d) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

209. When a plaintiff institutes a suit in a Civil Court for the ejectment of a trespasser, he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent, to be determined by the Court; and the Court may grant such relief accordingly.

210. (1) Subject to the provisions of section 140, the Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters, namely:—

- (a) the situation, quantity and boundaries of the land;
- (b) the name and description of the tenant thereof (if any);
- (c) the class to which he belongs, that is to say, whether he is a tenure-holder, *bajiaftidar*, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, under-raiyat or *chandnadar*, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure; and
- (d) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Order XXVI in the first Schedule to the Code of Civil Procedure, 1908, [1] by such Revenue-officer as the Local Government may authorise in that behalf by rule made under rule 9 in the said Order.

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

(Sec. 211.)

CHAPTER XV.[¹]SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER THE BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT, 1914.[²]

Recovery of
arrears of
rent under
the certificate
procedure in
certain areas.

211. (1) Any landlord (other than the Government) whose land is situate in an area for which a record-of-rights has been prepared and finally published, and in which such record is maintained, may apply to the Local Government, through the Collector of the district in which his land is situate, for the application of the procedure prescribed by the Bihar and Orissa Public Demands Recovery Act, 1914, to the recovery of the arrears of rent which he alleges are, or may accrue, due to him for lands in such area.

(2) The Local Government may reject any such application, or may allow it subject to such terms and conditions as it may see fit to impose, and may at any time add to or vary any terms or conditions so imposed, or withdraw its allowance of the application, without, in any of these cases, assigning any reason for its action.

(3) When any such application has been allowed, the landlord may make a requisition in writing, in the form prescribed, to such Revenue-officer as the Local Government may appoint for the purpose of this section, to perform the functions of a Certificate-officer under the Bihar and Orissa Public Demands Recovery Act, 1914,

for the recovery of any arrears of rent which he alleges are due to him from any tenant.

(4) Every such requisition shall be signed and verified by the landlord making it, in the manner prescribed by rule 1 in Schedule II to the said Act, as amended for the time being by rules made under section 39 thereof, and shall be chargeable with a fee of the amount which would be payable under the Court-fees Act, 1870, in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.

(5) On receipt of any such requisition, the said Revenue-officer may, in accordance with such rules as the Local Government may prescribe in this behalf, and if he is satisfied that the arrear is due, sign a certificate, in the prescribed form, stating that the arrear is due, and shall include in the certificate the fee paid under sub-section (4), and shall cause the certificate to be filed in his office :

[¹] This Chapter XV was substituted for the original Chapter XV by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 69, and Sch. III, Pt. II, printed, *post*, p. 610.

[²] B. and O. Act 4 of 1914, printed, *post*, p. 557.

(Sec. 211.)

Provided that—

(a) no certificate shall be signed for the recovery of arrears of rent of a tenancy regarding which a suit has been instituted in a Revenue Court for the alteration of the rent payable by the tenant or the determination of his status as a tenant, in respect of the period during which it is alleged in the requisition made under sub-section (3) that the arrears of rent sought to be recovered have accrued; and

(b) if, after the signing of a certificate, it is found that such a suit was instituted in a Revenue Court before the certificate was signed, such certificate shall be cancelled.

(6) The person in whose favour any certificate is signed under sub-section (5) shall be deemed to be the certificate-holder for the amount mentioned in the certificate, and the person against whom the certificate is signed shall be deemed to be the certificate-debtor for the said amount; and all proceedings taken by the Certificate-officer for the recovery of such amount shall be taken at the instance of the first-mentioned person, and at his cost and responsibility, and not otherwise.

(7) The Bihar and Orissa Public Demands Recovery Act, 1914, with such restrictions and modifications (if any) as may be prescribed, shall apply to the execution, and to all proceedings arising out of the execution, of certificates filed under sub-section (5).

(8) No landlord shall, during the pendency of any proceedings under this section, institute a suit in a Revenue Court for the recovery of any arrears of rent in respect of which he has made a requisition under sub-section (3);

and, subject to the provisions of section 43 of the Bihar and Orissa Public Demands Recovery Act, 1914, no tenant shall, after the signing of any certificate against him under sub-section (5) of this section, institute a suit in, or apply to, a Revenue Court for the alteration of the rent payable by him, or the determination of his status as a tenant, in respect of the period during which the arrears of rent for which such certificate was signed have accrued.

(9) The word 'landlord' in this section includes an entire body of landlords, and also one or more co-sharer landlords who collects or collect his or their share or shares of the rent separately; and, where a Revenue-officer signs a certificate on the requisition of one or more such co-sharer landlords, he shall at the same time issue to each of the remaining co-sharer landlords a copy of such certificate."

(Secs. 212-213.)

CHAPTER XVI.

SALE FOR ARREARS UNDER DÉCREET.

Passing of
tenure or
holding
sold in
execution of
decree.

212. 1 Where a tenure or holding is sold in execution of—

- (a) a decree for arrears of rent due in respect thereof, or
- (b) a decree for damages under section 186A, or
- (c) a certificate for arrears of rent signed under the Bihar and Orissa Public Demands Recovery Act, 1914,

the tenure or holding shall, subject to the provisions of section 28, pass to the purchaser,

if such decree was obtained by—

- (i) a sole landlord, or
- (ii) the entire body of landlords, or
- (iii) one or more co-sharer landlords who has, or have, sued for the rent due to all the co-sharers in respect of the entire tenure or holding and made all the remaining co-sharers parties defendant to the suit, or

if such certificate was signed on the requisition of, or in favour of, a sole landlord or the entire body of landlords."

(2) When one or more co-sharer landlords, having obtained a decree referred to in sub-section (1) or a decree in a suit framed under section 199, applies, or apply, for the execution of the decree by the sale of the tenure or holding, the Court shall, before proceeding to sell the tenure or holding, give notice of the application for execution to the other co-sharers.

General
powers of
purchaser as
to avoidance
of incum-
brances.

213. Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this Chapter as "protected interests," but with power to annul the interests defined in this Chapter as "incumbrances:"

Provided as follows:—

- (a) a registered and notified incumbrance within the meaning of this Chapter shall not be so annulled, except in the case hereinafter mentioned in that behalf;
- (b) the power to annul shall be exerciseable only in manner by this Chapter directed.

[1] This sub-section (1) was substituted for the original sub-section (1) by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 69 and Sch. III; Pt. II, printed, *post*, p. 610.

(Secs. 214-215.)

214. The following shall be deemed to be protected interests within the meaning of this Chapter:— Protected interests

- (a) any under-tenure existing from the time of the Permanent Settlement;
- (b) any sub-proprietary interest, *bajifti* tenancy or under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;
- (c) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying-grounds have been made;
- (d) any right of occupancy;
- (e) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI, or under Chapter XI;
- (f) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and
- (g) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

215. For the purposes of this Chapter,—

- (a) the term “incumbrance,” used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in section 214; Meaning of “incumbrance” and “registered and notified incumbrance.”
- (b) the term “registered and notified incumbrance,” used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument, of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided;
- (c) the terms “arrears” and “arrear of rent” shall be deemed to include interest decreed under section 76 or damages awarded in lieu of interest under sub-section (I) of section 77.

(Secs. 216-217.)

Application
for sale of
tenure or
holding.

216. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies, under sub-rule (2) of rule 11 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908,^[1] for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the pargana, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

Order of
attachment
and proclama-
tion of sale to
be issued
simulta-
neously.

217. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908,^[1] when the decree-holder makes the application mentioned in section 216, the Court shall, if under rule 17 in Order XXI in the first Schedule to the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by rule 66 in the said Order.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in rule 66 in the said Order, announce—

(a) in the case of a tenure, or a holding of a raiyat holding at fixed rates or of a *bajiaftidar*, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(b) in the case of an occupancy-holding, not being the holding of *bajiaftidar*, that the holding will be sold with power to annul all incumbrances.

(3) The proclamation shall, besides being made in the manner required by rule 67 in the said Order, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may direct in this behalf.

(4) Notwithstanding anything contained in rule 68 in the said Order, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

(Secs. 218-221.)

218. (1) When a tenure or a holding at fixed rates or a holding of a *bajiaftidar* has been advertised for sale under section 217, it shall be put up to auction subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 221, and not otherwise, annul any incumbrance upon the tenure or holding, not being a registered and notified incumbrance.

219. (1) If the bidding for a tenure or a holding at fixed rates or a holding of a *bajiaftidar* put up to auction under section 218 does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under rule 67 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908,^[1] announcing that the tenure or holding will be put up to auction and sold, with power to avoid all incumbrances, upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 221, and not otherwise, annul any incumbrance on the tenure or holding.

220. (1) When an occupancy-holding, not being the holding of a *bajiaftidar*, has been advertised for sale under section 217, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 221, and not otherwise, annul any incumbrance on the holding.

221. (1) A purchaser having power to annul an incumbrance under any of the foregoing sections, ^[2] [or under the Bihar and Orissa Public Demands Recovery Act, 1914,] and desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application, in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

^[1] Printed in the General Acts, 1904-08, Ed. 1909, p. 276.

^[2] The words "or under the Bihar and Orissa Public Demands Recovery Act, 1914," in sub-section (1) of s. 221 were inserted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 69 and Sch. III, Pt. II, printed, *post*, p. 610.

(Secs. 222-223.)

(3) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure or holding is sold in execution of a decree [¹][or a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914,] for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 214, clause (c), the purchaser may, if he has power under this Chapter [¹] [or that Act] to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

222. (1) The Local Government may, by notification in the local official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings, in any local area, which are put up for sale in execution of a decree for an arrear of rent due on them, shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class, in that local area, shall, for the purposes of sale under the foregoing sections of this Chapter, be treated in all respects as if they were tenures.

(3) Nothing in the sub-sections (1) and (2) shall apply to the holdings of *bajiaftidars*.

223. (1) In disposing of the proceeds of a sale under this Chapter, the following rules, instead of those prescribed by section 73 of the Code of Civil Procedure, 1908, [²] shall be observed, that is to say—

V of 1908

(a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;

[¹] The words "or a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914," and the words "or that Act" in sub-section (4) of s. 221 were inserted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 69 and Sch. III, Pt. II, printed, *post*, p. 610.

[²] Printed in the General Acts, 1904-08, Ed. 1909, p. 163.

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

ules for disposal of sale-proceeds.

(Sec. 224.)

- (b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the sale;
- (d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

Provided that, where a tenure or holding has been sold in execution of a decree obtained by one or more co-sharer landlords in a suit framed under section 199 or a decree referred to in sub-section (1) of section 212,—

- (i) payment of the amount due under such decree shall, notwithstanding anything contained in clause (b), be made to the decree-holder and to the other co-sharer landlords in proportion to the amount found to be due to each, and
- (ii) if there remains a balance, payment of any rent which may have fallen due in respect of the tenure or holding between the institution of the suit and the date of the sale shall, notwithstanding anything contained in clause (c), but subject to the determination, in the manner and with the effect mentioned in sub-section (2), of any dispute as to their respective rights to receive such rent, be made to the said decree-holder and the other co-sharer landlords in proportion to their respective shares in the tenure or holding.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c) of sub-section (1), or the amount of any payment contemplated by proviso (i) or proviso (ii) to the Code of Civil Procedure, 1908, shall not apply to a tenure or holding determination shall have the force of a decree.

224. (1) Rules 58 to 63 and 89 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908, shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released

Tenure or holding to be released from attachment only on payment into Court of amount of

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from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor, or any person having in the tenure or holding any interest voidable on the sale, may pay money into Court under this section.

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225. (1) When any person having, in a tenure or holding advertised for sale under this Chapter, [¹] [or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bihar and Orissa Public Demands Recovery Act, 1914,] an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—

(a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve and-a-half *per centum per annum* and secured by a mortgage of the tenure or holding to him;

(b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and

(c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

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[²]**226.** When a tenure or holding is advertised for sale—

(a) under this Chapter, in execution of a decree against a superior tenant defaulting, or

(b) in execution of a certificate, signed under the Bihar and Orissa Public Demands Recovery Act, 1914, for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting,

and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition

[¹] The words in brackets in s. 225 were inserted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 69, Sch. III, Pt. II, printed *post*, p. 610.

[²] The words in brackets in s. 226 were substituted for the original words by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914); s. 69 and Sch. III, Pt. II, printed, *post*, p. 610.

(Secs. 227-229.)

to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

V of 1908 **227.** (1) Notwithstanding anything contained in rule 72 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908,^[1] the holder of a decree in execution of which a tenure or holding is sold under this Chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

Decree-holder may bid at sale; judgment-debtor may not.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale; and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the judgment-debtor.

228. (1) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside, on his depositing in Court, for payment to the decree-holder, the amount recoverable under the decree, with costs, and, for payment to the purchaser, a sum equal to five per centum of the purchase-money.

Application by judgment-debtor to set aside sale.

V of 1908, (2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale, and the provisions of rule 93 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908,^[2] shall apply in the case of a sale so set aside:

Provided that, if a judgment-debtor applies under rule 90 in the said Order to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section, and if he applies under this section he shall not be entitled to make an application under the said rule 90.^[2]

(3) Rule 91 in the said Order^[2] shall not apply to any sale under this Chapter.

229. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1908,^[3] an instrument creating an incumbrance upon

Registration of certain instruments creating incumbrances.

[1] Printed in the General Acts, 1904-08, Ed. 1909, p. 277.

[2] Printed in the General Acts, 1904-08, Ed. 1909, p. 221.

[3] Printed in the General Acts, 1904-08, Ed. 1909, p. 566.

(Secs. 230-232.)

any tenure or holding, which has been executed before the commencement of this Act and is not required by section 17 of the said Registration Act^[1] to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

Notifications
of incum-
brances to
landlord.

230. Every officer who has, whether before or after the commencement of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

Power to
create in-
cumbrances
not extended.

231. Nothing contained in this Chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

CHAPTER XVII.

CONTRACT AND CUSTOM.

Restrictions
on exclusion
of Act by
agreement.

232. (1) Nothing in any contract between a landlord and a tenant, whether made before or after the commencement of this Act,—

- (a) shall bar in perpetuity the acquisition of an occupancy-right in land, or
- (b) shall take away an occupancy-right in existence at the date of the contract, or
- (c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or
- (d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and a tenant within a period of six years immediately preceding the commencement

(Sec. 232.)

of this Act, shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the commencement of this Act shall—

- (a) prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land;
- (b) take away or limit the right of an occupancy-raiyat to use land as provided by section 27;
- (c) take away the right of a raiyat to surrender his holding in accordance with section 97;
- (d) take away the right of a raiyat to transfer or bequeath his holding in accordance with custom or local usage;
- (e) take away the right of an occupancy-raiyat to sub-let subject to, and in accordance with, the provisions of this Act;
- (f) take away the right of a raiyat to apply for a reduction of rent under section 45 or section 60;
- (g) take away the right of a landlord or an occupancy-raiyat to apply for a commutation of rent under section 47; or
- (h) affect the provisions of section 76, relating to interest payable on arrears of money-rent:

Provided as follows:—

- (i) nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V, be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;
- (ii) when a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat;
- (iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of horticultural or orchard land with agricultural crops.

(Secs. 233-236.)

Explanation.—The expression “horticultural land,” as used in proviso (iii), means garden land, in the occupation of a proprietor or permanent tenure-holder, which is used *bonâ fide* for the cultivation of flowers or vegetables or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not primarily for profit or sale.

Permanent
mukarrari
cases.

233. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent *mukarrari* lease on any terms agreed on between him and his tenant.

Utbandi char
and *diara*
lands.

234. (1) Notwithstanding anything in this Act, a raiyat—

(a) who, in any part of the country where the custom of *utbandi* prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(b) who holds land of the kind known as *char* or *diara*,

shall not acquire a right of occupancy—

in case (a), in land ordinarily held under the custom of *utbandi* and for the time being held under that custom, or

in case (b), in the *char* or *diara* land,

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to raiyats holding land under the custom of *utbandi* in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant, or on a reference from the Revenue Court, declare that any land has ceased to be *char* or *diara* land within the meaning of this section; and thereupon all the provisions of this Act shall apply to the land.

Saving as to
service-ten-
ures.

235. Nothing in this Act shall affect any incident of a *ghatwali* or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the commencement of this Act, was not capable of being transferred or bequeathed.

Homesteads.

236. (1) When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

(Secs. 237-239.)

(2) Save as otherwise expressly provided in this Act, the incidents of the tenancy of a *chandnadar* shall be regulated by local custom or usage, and his rent shall be liable to re-assessment on each revision of a land-revenue settlement.

237. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions. Saving of custom.

Illustrations.

(1) The custom or usage whereby the right of a non-occupancy raiyat is heritable is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

(2) A usage under which a raiyat in a permanently-settled estate is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist will not be affected by this Act.

(3) The custom or usage, that an under raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

CHAPTER XVIII.

LIMITATION.

238. (1) The suits, appeals and applications specified in Schedule III shall be instituted and made within the time prescribed in that Schedule for them respectively; and every such suit or appeal instituted, or application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded. Limitation in suits, appeals and applications in Schedule III.

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

239. (1) Sections 6 to 9 of the Indian Limitation Act, 1908,^[1] shall not apply to the suits and applications mentioned in section 238. Portions of the Indian Limitation Act not applicable to such suits, etc.

(2) Subject to the provisions of this Chapter, the provisions of the Indian Limitation Act, 1908,^[2] shall apply to all suits, appeals and applications mentioned in section 238.

[1] Printed in the General Acts, 1904-08, Ed. 1909, pp. 477-479.

[2] Printed in the General Acts, 1904-08, Ed. 1909, p. 476.

(Secs. 240-242.)

CHAPTER XIX.

SUPPLEMENTAL

Penalties.

Penalties.

240. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

- (a) distrains or attempts to distrain the produce of a tenant's holding, or
- (b) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or
- (c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.^[1]

XLV of 1860

(2) Any person who abets, within the meaning of the Indian Penal Code,^[1] the doing of any act mentioned in sub-section (1), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

XLV of 1860

Damages for denial of Landlord's title.

Damages for denial of landlord's title.

241. (1) When, in any suit under this Act, the tenant renounces his character as tenant of the landlord by setting up without reasonable or probable cause title in a third person or himself, the Court may pass a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the annual rent payable by the tenant, as it may consider to be just.

(2) The amount of damages decreed under sub-section (1), together with any interest falling due thereon, shall, subject to the landlord's charge for rent, be a first charge on the tenure or holding of the tenant; and the landlord may execute such decree for damages and interest, either as a decree for a sum of money or, subject to the provisions of section 212, in any of the modes in which a decree for rent may be executed.

Agents and representatives and landlords.

Power of landlord to act through agent.

242. (1) Any appearance, application or act, in, before or to any Court or authority, required or authorized by this Act to be made or done

(Secs. 243-245.)

by a landlord, may, unless the Court or authority, otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

243. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them. Joint landlords to act collectively or by common agent.

244. Notwithstanding anything contained in this Act, every suit under this Act instituted by— Procedure in suits by joint landlords.

- (a) a sole landlord,
- (b) the entire body of landlords, or
- (c) one or more co-sharer landlords,

shall be subject to the provisions of sections 192 to 194;

and to every decree referred to in sub-section (1) of section 212, and to every decree in a suit framed under section 199, the provisions of Chapter XVI shall, so far as may be practicable, be applicable.

Rules under the Act.

245. The Local Government may, by notification in the local official Gazette, make rules— Power to make rules regarding procedure, powers of officers and service of notices

- (1) to regulate the procedure to be followed by Revenue officers in the discharge of any duty imposed, or the exercise of any power conferred, upon them by or under this Act, and may by such rules confer upon any such officer—

- (a) any power exercised by a Civil Court in the trial of suits;

- (b) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875;[*] and

(Secs. 246-249.)

- (c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil;
- (2) to prescribe the officers to whom applications should be made under section 160 for the sale of crops or products distrained under Chapter XIII; and
- (3) to prescribe the forms to be used, and the mode of service of notices issued, under this Act, where no form or mode is prescribed by this or any other Act.

Publication
of rules in
draft.

246. All powers conferred by this Act for making rules are subject to the condition that the rules be made after previous publication.

Provisions as to temporarily-settled districts.

Saving as to
tenancies held
in estates
which have
ever been
permanently
settled.

247. Where the area comprised in a tenancy is situated in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the land-revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement proceedings by a revenue-authority empowered by the Government to make definitively or confirm settlements.

Power to
alter rent in
case of new
assessment of
land-revenue.

248. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

- (a) land-revenue is for the first time made payable in respect of the land, or
- (b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, or of his own motion, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

Remission
and suspen-
sion of rent.

249. (1) Whenever from any cause the payment of the whole or any part of the land-revenue payable in respect of any land, not included in an area which has been permanently settled, is remitted or suspended, a Revenue-officer may, by general or special order, remit or suspend, as the case may be, the payment of the rent of that land to an amount which may bear the same proportion to the whole of the rent payable in respect of the land as the land-revenue of which the payment has been remitted

(Secs. 250-251.)

or suspended bears to the whole of the land-revenue payable in respect of the land, and may distribute the amount so remitted or suspended amongst the tenants holding such land as may seem to him to be equitable, having regard to the effect on their tenures or holdings of the cause which has led to the remission or suspension of the land-revenue:

Provided that, where the rent is taken by actual division of the produce, no portion of it shall be suspended under this section.

(2) An order passed under sub-section (1) shall not be liable to be contested by suit in any Court.

(3) No suit shall lie for the recovery of any rent of which the payment has been remitted, or, during the period of suspension, of any rent of which the payment has been suspended; and, so long as a suit does not lie, such rent shall not be legally payable.

(4) Where the payment of rent has been suspended, the period of suspension shall be excluded in the computation of the period of limitation provided for bringing a suit for the recovery of the rent.

(5) The provisions of this section relating to the remission and suspension of the payment of rent may be applied, as far as may be, to land of which the land-revenue has been wholly or in part released, compounded for or redeemed, in any case in which, if the land-revenue in respect of the land had not been released, compounded for or redeemed, the whole or any part of it might in the opinion of the Revenue-officer, have been remitted or suspended.

Recovery of certain dues.

250. The provisions of this Act applicable to arrears of rent and suits and proceedings for the recovery thereof, shall, as far as may be, apply to anything payable or deliverable in respect of—

Recovery of certain dues.

(a) any sub-proprietary interest,

(b) any *nij-jote*, *khamar*, *khudkast* or *nij-chas* land held by co-sharers;

(c) any land held by co-sharers, under the provisions of sub-sections (2) and (3) of section 26,

(d) any rights of pasturage, forest rights, rights over fisheries and the like, and

(e) any registration fees prescribed in sections 14, 15, 16 and 31.

Saving for conditions binding on landlords.

251. Where a proprietor, sub-proprietor or permanent tenure-holder holds his estate, sub-proprietary interest or tenure subject to the obser-

Tenant not enabled by Act to violate

(Sec. 252.)

conditions
binding on
landlord.

vance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate, sub-proprietary interest or tenure to do any act which involves a violation of that rule or condition.

Savings for special enactments.

Savings for
special
enactments.

252. Nothing in this Act shall affect—

- (a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;
- (b) any enactment regulating the procedure for the realisation of rents in estates belonging to the Government or under the management of the Court of Wards or of the Revenue authorities;
- (c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;
- (d) any enactment relating to the partition of revenue-paying estates;
- (e) any enactment relating to *patni* tenures, in so far as it relates to those tenures; or
- (f) any other special or local law not repealed either expressly or by necessary implication by this Act.

(Schedule I.)

SCHEDULE I.

ENACTMENTS REPEALED.

(See section 2.)

1	2	3
Number and year.	SHORT TITLE.	Extent of repeal.
PART I.—Bengal Regulations.		
VIII of 1799	The Bengal Decennial Settlement Regulation, 1793.	Sections 51, 52, 53, 54, 55, 64 and 65, and so much of section 34 as relates to kanungos.
V of 1912	The Bengal Land-revenue Sales Regulation, 1812.	Sections 2, 3, 4, 26 and 27.
VII of 1822	The Bengal Land-revenue Settlement Regulation, 1822.	Section 33, clause Third.
XI of 1825	The Bengal Alluvion and Diluvion Regulation, 1825.	In clause I of section 4, from the words "nor if annexed to a subordinate tenure" to the end of the clause.
XIII of 1825	The Bengal Land-revenue Settlement (Resumed Kanungos and Revenue-free Lands) Regulation, 1825.	Sections 2 and 3.
PART II.—Acts of the Governor General of India in Council.		
X of 1859	The Bengal Rent Act, 1859	The whole.
VIII of 1885	The Bengal Tenancy Act, 1885	The whole.
PART III.—Bengal Acts.		
VI of 1862	The Bengal Rent Act, 1862	The whole.
VIII of 1865	The Bengal Rent Recovery (Under-tenures) Act, 1865.	The whole, excepting section 3.
IV of 1867	The Bengal Rent (Appeals) Act, 1867.	The whole.
VIII of 1879	The Bengal Rent Settlement Act, 1879	The whole.
III of 1898	The Bengal Tenancy (Amendment) Act, 1898.	The whole.
I of 1907	The Bengal Tenancy (Amendment) Act, 1907.	The whole.

(Sec. 252.)

conditions
binding on
landlord.

vance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate, sub-proprietary interest or tenure to do any act which involves a violation of that rule or condition.

Savings for special enactments.

Savings for
special
enactments.

252. Nothing in this Act shall affect—

- (a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;
- (b) any enactment regulating the procedure for the realisation of rents in estates belonging to the Government or under the management of the Court of Wards or of the Revenue-authorities;
- (c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;
- (d) any enactment relating to the partition of revenue-paying estates;
- (e) any enactment relating to *patni* tenures, in so far as it relates to those tenures; or
- (f) any other special or local law not repealed either expressly or by necessary implication by this Act.

(Schedule 11.)

FORM OF ACCOUNT.

1. Year	2. Tenant's name	3. Particulars of holding (area, rent, etc.)—	Acres	Rate.	Rs. a p.
<i>Noldi.</i>					
Government Cesses					
		Acres.	Maunds		Rs. a p.
<i>Bhal.</i>					
	Jalkar				
	Bankar				
	Phalkar				
4.	Demand of the year.			Maunds.	Rs. a p.
5.	Balance of former years (Bakaya)				
6.	Total demand (current and arrear)				Rs. a p.
7.	Paid each on account of				
	{ Current de-				
	{ mand.				
	{ Arrear				
	demand				
8.	Paid in kind			Maunds.	
9.	Balance outstanding at end of year				Rs. a p.
10.	Signature of the Landlord or his Agent.				

FORM OF ACCOUNT.

[illegible]

SCHEDULE II.

FORMS OF RECEIPT AND ACCOUNT.

(See sections 65 and 66.)

FORM OF RECEIPT (TENANT'S PORTION).

Name of village _____ Receipt No. _____
 Tausi No. _____ Name of landlord _____
 Name of tenant _____
 Paying money rent. _____ Paying produce rent. _____
 Area of tenancy _____

Year.	Money-rent.	Road and Public Works Cesses.	Quality of produce.	REMARKS. (Here enter mutafra, interest, etc.)
Annual demand	Rs. A. P.	Rs. A. P.		
Arrears of				
Total demand				

Details of payment.

Year.	Kist.
Amount paid for	
Ditto	
Ditto	
Total paid	

By whom paid _____

Date of payment _____ Signature of landlord _____ or his agent _____

NOTES.—1. When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

2. If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit (see section 64 of the Orissa Tenancy Act, 1913).

3. Arrear, current and advance payments should be shown separately under the details of payment, thus—
 1307 (arrear).
 1308 (current).
 1309 (advance).

4. A separate receipt should be given for each separate tenure or holding.

FORM OF RECEIPT (LANDLORD'S PORTION).

Name of Village _____ Receipt No. _____
 Tausi No. _____ Name of landlord _____
 Name of tenant _____
 Paying money rent _____ Paying produce rent. _____
 Area of tenancy _____

Year.	Money-rent.	Road and Public Works Cesses.	Quality of produce.	REMARKS. (Here enter mutafra, interest, etc.)
Annual demand	Rs. A. P.	Rs. A. P.		
Arrears of				
Total demand				

Details of payment.

Year.	Kist.
Amount paid for	
Ditto	
Ditto	
Total paid	

By whom paid _____

Date of payment _____ Signature of landlord _____ or his agent _____

NOTES.—1. When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

2. If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit (see section 64 of the Orissa Tenancy Act, 1913).

3. Arrear, current, and advance payments should be shown separately under the details of payment, thus—
 1307 (arrear).
 1308 (current).
 1309 (advance).

4. A separate receipt should be given for each separate tenure or holding.

(Schedule III.)

Description of suit, appeal or application.	Period of limitation.	Time from which period begins to run.
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PART II.—Appeals.

5. From any decree or order under any portion of this Act except Chapter XI, to the Collector.	Thirty days . . .	The date of the decree or order appealed against.
6. From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days . . .	The date of the decree or order appealed against.
7. From any decree or order of a Collector under this Act, to the Commissioner.	Thirty days . . .	The date of the decree or order appealed against.

PART III —Applications.

8. For the execution of a decree or order made in a suit under this Act or any enactment repealed by this Act, not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1908.	Three years . . .	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been review of judgment, the date of the decision passed on the review.
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THE CHOTA NAGPUR RURAL POLICE ACT, 1914.

(BIHAR AND ORISSA ACT 1 OF 1914.)

CONTENTS.

PART I.

PRELIMINARY.

SECTION.

1. Short title and local extent
2. Definitions.

PART II.

VILLAGE-POLICE.

3. Determination of units and numbers of village-policemen, and appointment of Unit-tahsildars.
4. Determination of salaries of village-policemen.
5. Liability of certain proprietors and tenure-holders to pay the amount of the salaries of village-policemen.
6. Assessment, in other cases, to raise the amount required for salaries and equipment of village-policemen.
7. Fixing of such assessment.
8. Amount of assessment and exemptions from assessment.
9. Alteration of assessment.
10. Revision or confirmation of assessment.
11. Dues when payable.
12. Collection and custody of sums assessed.
13. Payment of village-policemen.
14. List of defaulters, and application for distraint.
15. Decision of objections to list of defaulters.
16. Distress warrants.
17. and proclamation of sale of proceeds.
18. from close of the year.
19. ss.
- 20.
21. Duties of village-policemen
22. Procedure on arrest by village-policeman.

PART III.

ROAD-PATROLS.

23. List of proprietors and tenure-holders liable for maintenance of road-patrols, and fixing of number and salary of patrols.
24. Copies of entries to be given to proprietors and tenure-holders.
25. Appeal from entries in lists.
26. Proprietors and tenure-holders entitled to receive rent for land held by road-patrol in lieu of, or in addition to, his salary.
27. Payments of salaries to road-patrols.
28. Recovery of sums due for such salaries.
29. Duties of road-patrol.

BIHAR AND ORISSA ACT 1 OF 1914.

(THE CHOTA NAGPUR RURAL POLICE ACT, 1914.)[¹]

(11th March, 1914.)

An Act to amend the law relating to the regulation of the Rural Police in the Chota Nagpur Division.

Whereas it is expedient to amend the law relating to the appointment, dismissal, maintenance and duties of village-policemen and road-patrols in the Chota Nagpur Division;

It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be called the Chota Nagpur Rural Police Act, 1914; Short title and local extent.

(2) (a) The whole Act extends to the districts of Hazaribagh, Ranchi and Palamau.

(b) Parts I, II and IV extend to the district of Singhbhum except the Kolhan Government Estate and to the district of Manbhum.

(c) Part III extends to the following parganas of the Manbhum district:—

Pargana	Bagda.	Pargana	Katras
"	Banchas.	"	La'harka.
"	Barpara.	"	Lakda.
"	Chaurasi.	"	Nahchanda.
"	Cheliana.	"	Nagarikiri.
"	Chharra.	"	Nawagarh.
"	Domarkonda.	"	Palma.
"	Jamagar.	"	Pandra.
"	Kasarpur.	"	Pera.
"	Khaspel.	"	Rekab.

Provided that no part of this Act shall apply to any area to which the Bengal Municipal Act, 1884,^[2] has been, or may hereafter be, extended.

[¹] For Statement of Objects and Reasons, see the *Bihar and Orissa Gazette*, 1913, Pt. V, pp. 450-452; for Report of the Select Committee see *ibid.* Pt. VIII, pp. 3 and 4; for Proceedings in Council, see *ibid.* 1914, Pt. VI, pp. 33 and 39.

LOCAL EXTENT.—See section 1 (2) above. The Act does not apply, nor can be extended, to any place outside the Chota Nagpur Division.

[²] Printed in Volume II of this Code.

(Secs. 2-3.)

(3) The Lieutenant-Governor in Council may, by notification published in the *Bihar and Orissa Gazette*, extend the Act, or any portion thereof, to any district in the Chota Nagpur Division, or to any specified part of a district, from a date to be mentioned in such notification; and may, by like notification, withdraw any district or any specified part of a district from the operation of this Act, or any portion thereof, from a date to be mentioned in such notification.

Definitions:

2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) "road-patrol" includes a ghatwal, a digwar, and any other person, by whatever name he may be called who is engaged in the performance of the duties assigned by this Act to road-patrols;
- (b) "proprietor" and "tenure" have the meanings respectively assigned to those expressions by the Chota Nagpur Tenancy Act, 1908;
- (c) "village" includes a group of villages;
- (d) "village-policeman" includes a chaukidar, a gorait and a kotwar.

PART II.

VILLAGE-POLICE.

Determina-
tion of units
and numbers
of village-
policemen,
and appoint-
ment of Unit-
tahsildars.

3. The Deputy Commissioner shall determine—

- (a) the number of units into which his district shall be divided for the purposes of this Act,
- (b) the respective limits, of such units, and
- (c) the number of village-policemen to be appointed for each village within each unit;

and shall appoint a Unit-tahsildar for each unit:

Provided as follows:—

- (i) except with the sanction of the Commissioner, there shall not be more than one village-policeman for every seventy-five houses; and
- (ii) the Deputy Commissioner
 - (a) with the sanction of the Commissioner, may, and,
 - (b) on the application of two-thirds of the adult male inhabitants of any village, shall

(Secs. 4-7.)

appoint in place of the Unit-tahsildar a panchayat, consisting of not less than three or more than five persons; and such panchayat shall as far as such village is concerned perform the duties of a Unit-tahsildar under this Act.

4. The Deputy Commissioner shall from time to time determine the monthly salaries of the village-policemen:—

Determina-
tion of
salaries
of village-
policemen.

Provided as follows:—

(a) such salaries shall not be less than two, or, without the sanction of the Commissioner, more than four, rupees *per mensem* for each village-policeman; and

(b) in determining such salaries the Deputy Commissioner shall take into consideration the value of the chakran lands (if any) held by a village-policeman.

5. Whenever any proprietor or tenure-holder holds subject to the condition, expressed or implied, of maintaining the village-police within his estate, or tenure, he shall be liable to pay the amount of the salaries determined by the Deputy Commissioner under section 4.

Liability of
certain prop-
rietors and
tenure-
holders to
pay the
amount of
the salaries
of village-
policemen.

6. (1) In cases other than those referred to in section 5, the amount required for the salaries and equipment of the village-policemen within any unit,

Assessment in
other cases,
to raise the
amount
required for
salaries and
equipment of
village-
policemen.

together with a sum, not exceeding three-and-a-half annas in the rupee of such amount, to provide for payment of—

(a) the expenses of collection and of management,

(b) rewards to village-policemen, and

(c) losses from the non-realization of sums from defaulters, shall be assessed on each unit.

(2) Every occupier of a house and every owner of a vacant house in any village in a unit and every proprietor or tenure-holder who has a bhandar or cutcherry for the collection of rent, or khas cultivation, within any village in a unit, shall be liable to assessment under sub-section (1).

7. (1) The amount payable in each unit in pursuance of section 6 shall be fixed by the Deputy Commissioner, who shall cause a list to be prepared by the Unit-tahsildar or the Panchayat as the case may be, showing the amount payable yearly by each person in each village within each unit who is liable to assessment.

Fixing of
such as-
sessment.

(2) The list prepared under sub-section (1) for a village shall, when sanctioned by the Deputy Commissioner, be published at some conspicuous place within the village, and shall remain in force until altered by the Deputy Commissioner.

8. The amount at which each person is assessed under section 7 shall be fixed according to the circumstances and the property to be protected of such person :

Provided as follows :—

(a) the amount to be assessed in the same village on any one person shall not exceed one rupee *per mensem* in the case of a proprietor, tenure-holder or trader, or eight annas *per mensem* in all other cases; and

(b) all persons who, in the opinion of the Deputy Commissioner, are too poor to pay half an anna *per mensem* shall be exempted from assessment.

9. The Deputy Commissioner may from time to time alter the amount assessed on any village.

10. Any person who is dissatisfied with the amount at which he has been assessed may apply to the Deputy Commissioner, either orally or in writing, for a revision of the assessment; and the Deputy Commissioner may amend, remit or confirm the assessment.

11. Every sum due under section 5, and every assessment made under section 6, shall be payable on the first day of January in each year.

12. The Unit-tahsildar shall collect from each village in his unit the amount payable by each of the persons assessed in such village and shall grant printed receipts for the same, and shall pay the amount so collected to the credit of the Chaukidari Fund.

13. The Superintendent of Police shall, before the fifteenth day of each month, remit to the Sub-Inspector of Police of each thana the salaries due for the last preceding month to all village-policemen appointed under this Act for villages situated within the local area of such thana;

and such Sub-Inspector of Police shall on the parade-day next following his receipt thereof hand over to each village-policeman at the thana the salary so due to him, and shall take a receipt for the same.

14. At the end of the first half of each year, the Unit-tahsildar shall prepare a list of persons assessed under this Part who have failed to pay the amounts due from them, and may then apply to the Deputy Commissioner for the attachment and sale of any movable property belonging to the defaulters.

Amount of
assessment
and exemp-
tions from
assessment.

Alteration of
assessment.

Revision or
confirmation
of assess-
ment.

Dues when
payable.

Collection
and custody
of sums
assessed.

Payment of
village-
policemen.

List of
defaulters,
and applica-
tion for
distrain.

(Secs. 15-20.)

15. If any person whose name has been included in a list of defaulters prepared under section 14 disputes his liability to pay the amount mentioned in such list, or any portion thereof, he may apply to the Deputy Commissioner, either orally or in writing, stating the grounds of his objection; and the Deputy Commissioner shall examine his objection and pass such order thereon as he may think proper.

Decision of objections to list of defaulters.

16. (1) When the Deputy Commissioner receives a list of defaulters prepared under section 14, he shall, subject to any orders passed under section 15, issue a warrant in the form prescribed under section 37.

Distress warrant.

(2) Every warrant issued under sub-section (1) shall be signed by the Deputy Commissioner, and shall authorize the levy, by distraint and sale of a sufficient portion of the movable property of each of the defaulters, other than plough cattle and tools and implements of trade or agriculture, of the amount due from him together with a penalty, not exceeding twenty-five *per cent.* of the amount due from him, to cover the costs of the distraint and sale.

17. (1) The person deputed to execute such warrant shall seize such portion of the movable property of the defaulters as he may think sufficient, and shall keep the same in his own custody or in the custody of some suitable person resident, in the locality, and shall make an inventory of all movable property so seized, and shall, at the same time, make proclamation, by beat of drum, of the time and place where the property will be sold.

Seizure and custody of property, and proclamation of sale.

(2) The time of sale fixed under sub-section (1) shall be not less than five, or more than ten, days from the date of the proclamation thereof.

18. If any defaulter does not, within the time so proclaimed, pay the amount due from him, together with the penalty described in sub-section (2) of section 16, the movable property distrained, or a sufficient portion thereof, shall be sold by public auction at the time and place so proclaimed; and the proceeds shall be applied in discharge of the said amount and costs, and the surplus (if any) shall be returned to the owner of the distrained property.

Sale of property and application of proceeds.

19. No arrear of any assessment payable under this Act shall be levied by distress after the expiration of three months from the close of the year on account of which it is due.

No distraint after three months from close of the year.

20. No distress levied under this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect, or want of form in any list, assessment-notice, summons, power, writing, inventory, or other proceeding relating thereto, nor shall

Irregularities not to avoid distress.

(Sec. 21.)

such person be deemed a trespasser from the commencement on account of any irregularity afterwards committed by him;

But all persons aggrieved by any such irregularity may, subject to the provisions of section 33, recover, in any Court of competent jurisdiction, full satisfaction for any special damage sustained by them.

Duties of
village-
policemen.

21. (1) Every village-policeman appointed under this Act shall perform the following duties:—

- (i) he shall give immediate information, to the officer in charge of the police-station within the limits of which his village is situated, of every unnatural, suspicious or sudden death which may occur, and of every offence specified in the Schedule which may be committed, within such village;
- (ii) he shall keep the police informed of all disputes which are likely to lead to any riot or serious affray;
- (iii) he shall arrest—
 - (a) all proclaimed offenders,
 - (b) all persons whom he may find in the act of committing any offence specified in the Schedule, and
 - (c) any person against whom a hue and cry has been raised of his having been concerned in any offence specified in the Schedule, whether such offence has been or is being committed within or outside his village;
- (iv) he shall, to the best of his ability, prevent, and may interpose for the purpose of preventing, the commission of any offence specified in the Schedule;
- (v) he shall assist private persons in making such arrests as they may lawfully make, and shall without delay report such arrests to the officer in charge of the police-station within the limits of which his village is situated;
- (vi) he shall receive into his custody persons who have been lawfully arrested;
- (vii) he shall observe, and from time to time report to the officer in charge of the said police-station, the movements of all bad characters in his village;
- (viii) he shall report to the officer in charge of the said police-station the arrival of suspicious characters in the neighbourhood;

(Secs. 22-24.)

- (ix) he shall, at such intervals as the Deputy Commissioner may determine, report to the officer in charge of the said police-station the births and deaths (if any) which have occurred within his village;
- (x) he shall present himself at the said police-station at such intervals as the Deputy Commissioner may determine;
- (xi) he shall supply any local information which the Deputy Commissioner or any officer of police may require; and
- (xii) he shall obey the orders of the Deputy Commissioner in regard to keeping watch in his village and to other matters connected with his duties as village-policeman.

(2) The expression "his village," as used in this section with reference to any village-policeman, means the village for which such village-policeman is appointed.

22. Whenever a village-policeman arrests or assists to arrest any person, or receives into his custody any person lawfully arrested, he shall forthwith take the person so arrested to the police-station within the limits of which the village for which he is appointed is situated: Procedure on arrest by village-police man.

Provided that, if the arrest is made at night, such person shall be so taken as soon as convenient on the following morning.

PART III.

ROAD-PATROLS.

23. The Deputy Commissioner shall maintain a list showing what proprietors and tenure-holders within his district hold their estates and tenures subject to a condition, expressed or implied, of protecting lines of roads or passes, and shall fix the number of road-patrols to be kept up for such roads or passes, and the salary to be paid monthly to each road-patrol: List of proprietors and tenure-holders liable for maintenance of road-patrols, and fixing of number and salary of patrols.

Provided that such salary shall in no case be less than three or more than five rupees *per mensem*.

24. A copy of the entry in such list affecting him shall be given to each such proprietor or tenure-holder. Copies of entries to be given to proprietors and tenure-holders.

(Secs. 25-29.)

Appeal from
entries in
lists.

25. If any proprietor or tenure-holder is dissatisfied with such entry, he may appeal, within thirty days of the receipt of the copy of the entry, to the Commissioner who shall pass such order as seems to him proper.

Proprietors
and tenure-
holders
entitled
to receive
rent for
land held by
road-patrol
in lieu of, or
in addition
to, his salary.

26. (1) When any land is held under any proprietor or tenure-holder by any road-patrol, in lieu of, or in addition to, his salary, for the protection of any road or pass, the proprietor or tenure-holder who is responsible for the protection of such road or pass, shall, if assessed under section 23, be entitled to receive rent for such land at the same rate as is paid for similar raiyatwari land in the vicinity.

(2) The Deputy Commissioner shall send to each such proprietor or tenure-holder an order, in the form prescribed under section 37, specifying the land for which he is entitled to receive rent at the said rate.

Payments of
salaries to
road-patrols.

27. All proprietors and tenure-holders specified in the list mentioned in section 23 shall each month pay the amount entered therein against their names to the Superintendent of Police, who shall pay the same to the road-patrols to whom it is due.

Recovery of
sums due for
such salaries.

28. (1) If the sum due from any proprietor or tenure-holder for any month is unpaid after the fifteenth day of the next succeeding month, the Deputy Commissioner shall issue a notice calling on the defaulter to pay the same, together with the costs of serving the notice, within fifteen days from the service of the notice.

(Secs. 30-32.)

- (3) he shall forthwith take all persons so arrested to the police-station within the limits of which he acts as road-patrol;
- (4) he shall report to the officer in charge of the police-station within the limits of which his beat is situated the movements of all bad or suspicious characters along his beat, as well as all unusual circumstances that come to his notice; and
- (5) he shall supply any local information which the Deputy Commissioner or any officer of police may require.

PART IV.

MISCELLANEOUS.

30. Subject to the approval of the Deputy Commissioner, the Superintendent of Police may appoint, and may dismiss for misconduct or neglect of duty, any village-policeman or road-patrol.

Power to appoint and dismiss village-policeman or road-patrol
Penalty on village-policeman or road-patrol for certain offences.

31. Every village-policeman or road-patrol who—

- (a) withdraws himself from the duties of his office without the express permission of the Superintendent of Police, or of some other officer duly authorized to grant such permission, or
- (b) resigns his office without the permission of the Superintendent of Police, unless he has given to his superior officer at least two months previously, a written notice of his intention to resign, or
- (c) is guilty of cowardice, or
- (d) offers any unwarrantable personal violence to any person in his custody,

shall be liable, on conviction before a Magistrate, to a fine not exceeding three months' pay, or to imprisonment for a period not exceeding three months, or to both.

32. Every village-policeman or road-patrol who is guilty of any wilful misconduct in his office, or any neglect of his duty, such misconduct or neglect not being an offence within the meaning of the Indian Penal Code^[1] and not being of so grave a character as, in the opinion of the

Power of Superintendent of Police to fine village policeman or road-patrol

Superintendent of Police, to require his dismissal from his office, shall be liable, under the order of the Superintendent, to a fine not exceeding one month's salary.

Limitation
of suits.

33. Every suit brought against the Deputy Commissioner or any of his officers, or any person acting under his direction, for anything done or purporting to be done by the defendant under this Act, shall be commenced within six months next after the accrual of the cause of action, and not afterwards.

Control by
Commis-
sioner, and
delegation
of powers
and func-
tions.

34. The Commissioner shall have a general power of control over the proceedings of all officers under this Act, and may appoint any Gazetted Officer to exercise and perform all or any of the powers and functions vested in and exerciseable by the Deputy Commissioner or the Superintendent of Police under this Act.

Service of
notice.

35. Every notice under this Act shall be served either personally on the person to whom the notice is directed, or by affixing a true copy thereof on some conspicuous part of his dwelling-house or principal out-cherry within the district.

Saving of
liability of
proprietor
or tenure-
holder to
report
crimes.
Power to
make rules.

36. Nothing contained in this Act shall diminish or in any way affect any liability, duty or obligation of any proprietor or tenure-holder under any law for the time being in force, to report crimes or offences occurring within his estate or tenure.

37. (1) The Commissioner may, subject to the control of the Local Government, make rules^[1] to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the manner in which the assessment under sections 6 and 7 is to be made;

(b) regulate the alteration of assessments under section 9;

(c) prescribe the conditions subject to which Unit-tahsildars are to be appointed, punished and dismissed, and the security to be furnished by them, and the manner in which they are to perform their duties;

(d) regulate the duties and procedure of Panchayats;

(e) fix the penalty to be levied under section 16;

(f) prescribe forms for use under section 16 or section 26.

(3) All such rules shall be published in the *Bihar and Orissa Gazette*.

^[1] For rules so made, see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VII.

(Sec. 33. *The Schedule.*)

Ben. Act of
1887.
Reg. XX of
1917.

38. (1) The Chota Nagpur Rural Police Act, 1887, is hereby repealed. Repeals

(2) Section 21 of the Bengal Police Regulation, 1817,^[1] shall be deemed to be repealed in any District or specified part of a District to which this Act or any portion thereof has been extended under subsection (3) of section 1.

THE SCHEDULE.

(See sections 21 and 22.)

Offences to be reported and for which village-policeman or road-patrol must arrest.

Murder, culpable homicide, rape, dacoity, robbery, theft, mischief by fire, house-breaking, counterfeiting coin, causing grievous hurt, riot, administering stupefying drugs, kidnapping, and all attempts and preparations to commit, and abetments of, any of the said offences.

[1] Printed in Vol I of this Code

BIHAR AND ORISSA ACT 2 OF 1914.

[THE BIHAR AND ORISSA FERRIES (AMENDMENT) ACT, 1914.][¹]

(11th March, 1914.)

An Act to amend Act 2 of 1914.

Angul Act I 1835. Whereas it is expedient to amend the Bengal Ferries Act, 1885,^[2] in the manner hereinafter appearing;

and 53 t. c. 14. And whereas the sanction of the Governor General has been obtained under section 5 of the Indian Councils Act, 1892,^[3] to the passing of this Act;

It is hereby enacted as follows:—

Angul Act I 1835. 1. This Act may be called the Bihar and Orissa Ferries (Amendment) Short title. Act, 1914.

2. From section 26 of the Bengal Ferries Act, 1885, the words “with the approval of the Commissioner” shall be omitted. Amendment of section 26, Bengal Act I of 1885.

[¹] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the Bihar and Orissa Gazette, 1914, Pt. VIII, p. 2; for Proceedings in Council, see *ibid*, Pt. VI, p. 6. NOTE.—This Act was not referred to a Select Committee.

LOCAL EXTENT.—The local extent of this Act is the same as that of Ben. Act I of 1885, printed in Vol. II of this Code.

It is in force in the Southal Parganas, but its application is barred in the Angul District by the Angul Laws Regulation, 1913 (III of 1913), s. 3 (2), printed in Vol. I of this Code.

[²] Printed in Volume II of this Code.

[³] Printed in the Collection of Statutes relating to India, 1913, Vol. II, p. 804

BIHAR AND ORISSA ACT 3 OF 1914.

[THE JHARIA WATER SUPPLY ACT, 1914.]

CONTENTS.

CHAPTER I.

PRELIMINARY

PREAMBLE.

SECTION.

1. Short title, commencement and extent.
2. Definitions.

CHAPTER II

THE WATER BOARD.

3. Creation and incorporation of Board.
4. Number of Members, Chairman and Vice-Chairman.
5. Election of Members.
6. Term of office.
7. Business to be transacted at first meeting.
8. Appointment of Engineer.
9. Appointment of other officers and servants.
10. Delegation of powers to Vice-Chairman.
11. Contracts by Board
12. Rules as to conduct of business, etc

CHAPTER III.

CONSTRUCTION OF WATERWORKS.

13. Preparation of scheme and submission to Government
14. Local Government to approve, modify or refer scheme.
15. Publication of approved scheme.
16. Sanction of scheme.
17. Application of sections 13 to 16 to extension schemes.
18. Acquisition of land for waterworks.
19. Right of user for aqueducts, conduits and lines of mains or pipes.
20. Application of Act XVIII of 1885 to lands in respect of which right of user is enjoyed.
21. Restrictions on exercise of powers in case of lands belonging to Government, a Local Authority, or a Railway or Tramway Company.
22. Decision of disputes regarding compensation and other matters, and appeal therefrom.
23. Precautions to be taken when breaking up road, railway or tramway.
24. Powers for carrying out sanctioned scheme.
25. Map to be prepared and maintained.
26. Power to make rules.

CHAPTER IV.

THE SUPPLY OF WATER

SECTION.

27. Supply of water through mains to collieries.
28. Supply of water through mains to premises.
29. Supply of water through stand-pipes.
30. Communication and service pipes.
31. Rates to be charged for water.
32. Meters.
33. Presumption as to correctness of meters.
34. Testing of meters.
35. Replacement of broken meters.
36. Water for other than domestic purposes.
37. Communication pipes, etc., to be made to satisfaction of Board.
38. Power to enter premises.
39. Power to turn off water when pipes are out of repair.
40. Power of Board to make by-laws for the prevention of waste and to prescribe water fittings.
41. Power to cut off water on neglect.
42. Inspection of works and fittings before supply of water is finally sanctioned.
43. Owner to keep estimate and specification of works.
44. Recovery of water-rate, costs and expenses.

CHAPTER V.

THE JHARIA WATER FUND.

45. Jharia Water Fund.
46. Application of Fund.
47. Annual estimate of income and expenditure.
48. Consideration of estimate by Board.
49. Submission of estimate to Commissioner.
50. Estimate of expenditure on commencement.
51. Supplementary estimates.
52. Restrictions on expenditure not included in budget.
53. Power to make rules.

CHAPTER VI.

TONNAGE AND ROYALTY CESSES.

54. Levy of cesses.
55. Tonnage cess.
56. Royalty cess.
57. Publication of yearly rates in official Gazette.
58. Notice to furnish returns.
59. If return not furnished or incorrect, Board to assess quantity despatched.
60. Notice to owner of quantity ascertained.
61. Notice of cess payable and dates.
62. Payment to Board, and deposit to credit of Water Fund.
63. Realization of arrears.
64. Power to make rules.

CHAPTER VII.

PENALTIES.

65. Penalty for obstructing the laying out of waterworks.
66. Penalty for causing damage to waterworks.

SECTION.

- 67. Penalty for obstructing or drawing off water.
- 68. Penalty for waste of water by consumer.
- 69. Penalty for waste in other cases.
- 70. Penalty for misuse of water.
- 71. Penalty for defiling water.
- 72. Penalty for tampering with meters.
- 73. Penalty for obstruction to Board's Officers.
- 74. Penalty for giving false returns.
- 75. Penalty for breach of provisions of Act, not otherwise provided for.
- 76. Prosecution of owner, Agent or Manager.

CHAPTER VIII.

MISCELLANEOUS

- 77. Publication of rules, orders and notifications.
- 78. Service of notices, bills, forms or notices of demand.
- 79. Appeals.
- 80. Powers of Local Government in case of default.
- 81. Power to supersede Board in case of incompetency, default or abuse of powers.
- 82. Consequences of supersession.

BIHAR AND ORISSA ACT 3 OF 1914.

(THE JHARIA WATER SUPPLY ACT, 1914.)^[1]

(10th June, 1914.)

**An Act to enable the provision of a supply of water for the
Jharia Coal Fields.**

Whereas it is expedient that provision should be made for the construction and maintenance of waterworks and for the supply of water for domestic purposes to the Jharia Coal Fields;

And whereas it is expedient that a Water Board should be constituted and invested with special powers for carrying out the objects of this Act;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Jharia Water-Supply Act, 1914; Short title,
commence-
ment and
extent.

^[2] (2) It shall come into force on such day as the Local Government may, by notification, direct.

(3) It extends to the coal-bearing area included within the Jharia, Katras and Nawaghar Parganas in the district of Manbhum, and to those portions of the districts of Hazaribagh and Manbhum, to which the Local Government may by notification^[3] declare such extension to be necessary for the purpose of carrying out the objects of this Act.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the Bihar and Orissa Gazette, 1914, Pt. II, p. 14; for Report of the Select Committee, see *ibid*, Pt. V, pp. 55-57; for Proceedings in Council, see *ibid*, Pt. VI, pp. 319-323.

LOCAL EXTENT.—See section 1 (3) above. The application of the Act is barred in—the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (3), printed in Vol. I, p. 864; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. 777.

^[2] The Act came into force on the 7th October, 1914, see Notification No. 103-57, dated 2nd October, 1914, Bihar and Orissa Gazette, 1914, Pt. II, pp. 20-23.

^[3] For notifications extending the Act to other parts of the districts of Hazaribagh and Manbhum, see the Bihar and Orissa Statutory Rules and Orders, 1918, Vol. I, Pt. VII.

(Secs. 2-3.)

(4) The Local Government may from time to time, by notification,^[1] extend this Act subject to such modifications and restrictions as may be necessary, to any other district or portion of a district.

Definitions.

2. In this Act, unless there be anything repugnant in the subject or context—

- (a) "Area of supply" means the area to which this Act extends;
- (b) "The Board" means the Jharia Water Board established under this Act;
- (c) "Mine" and "Owner of a mine" have the same meaning as in section 3 of the Indian Mines Act, 1901;^[2]
- (d) "Royalty" means any sum payable as a charge per unit of quantity upon the produce of a colliery and includes any fixed payment which may be merged in such charges.
- (e) "Water for domestic purposes" does not include water for cattle or for horses or for washing carriages, where the cattle, horses or carriages are kept for sale or hire or by a common carrier, or a supply for the purposes of any mining operation, or for any manufacture or business or for watering gardens, or for fountains or for any ornamental purpose;
- (f) "Waterworks" include streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, conduits, cuts, sluices, filterbeds, mains, pipes, hydrants, culverts, engines and all machinery, lands, buildings and things for supplying or used for supplying water.

CHAPTER II.

THE WATER BOARD.

creation and
incorporation of
Board.

3. (1) A Board to be called the Jharia Water Board shall be established for the purpose of constructing and maintaining waterworks, and generally for the purpose of supplying water for domestic purposes within the area of supply and for carrying the powers of this Act into execution.

(2) The Board shall be a body corporate and have perpetual succession and a common seal, and shall sue and be sued by the name of the Jharia Water Board.

[1] For such notifications, see the Bihar and Orissa Statutory Rules and Orders, 1918, Vol. I, Pt. VII.

[2] Printed in the General Acts, 1898-1901, Ed. 1909, pp. 517-531.

(Secs. 4-9.)

4. (1) The Board shall consist of—

- (a) four members elected by mine owners;
- (b) one member elected by royalty-receivers;
- (c) not more than four members nominated by the Local Government.

Number of
members,
Chairman
and Vice-
Chairman.

(2) The Chairman of the Board shall be appointed by the Local Government by notification in the official Gazette.

(3) The Vice-Chairman shall be elected by and from the members of the Board.

[1]5. The election of members by mine owners and royalty-receivers shall be made in the manner prescribed by rules made in this behalf by the Local Government.

Election of
Members.

6. (1) The term of office of the first members nominated or elected under section 4 shall commence on such day as may be fixed by the Local Government.

Term of
office.

(2) The term of office of members nominated or elected shall be three years, but any such member may, at the expiration of such term, be re-elected or re-appointed.

7. The Board shall, on the date fixed by the Local Government under sub-section (2) of section 6, or so soon thereafter as may be expedient, hold a special meeting and at such meeting shall—

Business to
be transacted
at first
meeting.

(i) elect a Vice-Chairman;

(ii) appoint a Secretary;

(iii) determine the number and fix the salaries of the officers and servants whom they consider necessary and proper to employ for the purposes of this Act.

8. The Local Government shall appoint a duly qualified Engineer to supervise and take charge of the construction and maintenance of water-works, and shall fix the salary and allowances to be paid to such Engineer by the Board.

Appointment
of Engineer.

9. The power of appointing, promoting and granting leave to all other officers and servants of the Board, and reducing, suspending or dismissing them for misconduct and dispensing with their services for any reason other than misconduct shall be vested—

Appointment
of other
officers and
servants.

(i) in the case of officers and servants whose monthly salary does not exceed one hundred rupees in the Chairman; and

(ii) in other cases in the Board.

[1] For rules made under this section, see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VII.

(Secs. 10-12.)

Delegation of
powers to
Vice-Chair-
man.

10. The Chairman may, with the approval of the Local Government by general or special order in writing, delegate to the Vice-Chairman any of the Chairman's powers, duties or functions under this Act or under any rule made thereunder unless such delegation is expressly prohibited by any such rule:

Provided as follows:—

(a) the Chairman shall not delegate his power under section 11 to make, on behalf of the Board, any contract involving an expenditure exceeding five hundred rupees;

(b) the Chairman shall not delegate his power under section 9 to make appointments to offices carrying a salary of more than fifty rupees a month.

Contracts by
Board.

11. (1) The Board may enter into and perform all such contracts as they may consider necessary or expedient for carrying out any of the purposes of this Act.

(2) Every such contract shall be made on behalf of the Board by the Chairman:

Provided that—

(a) a contract involving an expenditure exceeding one thousand rupees and not exceeding fifty thousand rupees shall not be made by the Chairman without the previous sanction of the Board; and

(b) a contract involving an expenditure exceeding fifty thousand rupees shall not be made by the Board without the previous sanction of the Local Government.

(3) Every estimate for the expenditure of any sum for carrying out the purposes of this Act shall be subject to the approval of the authority who is empowered by sub-section (2) to make or sanction the making of a contract involving the expenditure of a like sum.

Rules as to
conduct of
business, etc.

12. The Local Government may from time to time make rules as to—

(a) the time, place and adjournment of meetings;

(b) the conduct of business at meetings;

(c) the notice to be given of meetings;

(d) the attendance of members at meetings and the allowances to be paid therefor;

(e) the quorum necessary for a meeting;

(f) the custody of the common seal;

(g) the persons by whom receipts shall be granted for money received under this Act;

(Secs. 13-16.)

- (h) the duties, appointment, leave, fining, suspension and removal of the officers and servants of the Board;
- (i) the execution of contracts and the invitation for tenders;
- (j) the delegation of powers or duties of the Board under this Act to the Chairman, the Engineer and the Secretary

CHAPTER III.

CONSTRUCTION OF WATERWORKS.

13. As soon as may be after the commencement of this Act the Board shall cause to be prepared a scheme and estimates of the cost of the works necessary for the purpose of providing a supply of water sufficient for the area of supply together with maps and plans of all the works of water-supply on such scale as may be prescribed by rule in this behalf, and shall submit the same to the Local Government through the Commissioner of the Division.

14. The Local Government shall consider the scheme together with the plans, maps, and estimates and may thereupon—

- (a) sanction the scheme, or,
- (b) add to, alter, or modify the scheme and approve the scheme so added to, altered or modified, or,
- (c) add to, alter or modify the scheme and return the same so added to, altered or modified, together with the plans, maps, and estimates to the Water Board, who shall further consider the scheme so added to, altered or modified and report thereon to the Local Government through the Commissioner of the Division.

15. When the scheme has been approved by the Local Government there shall be published in the official Gazette, and locally, the following particulars:—

- (a) a general description of the scheme;
- (b) an estimate of the cost of carrying it out,
- (c) an estimate of the cost of maintaining it;
- (d) the source from which the cost will be met.

16. After the expiry of two months from the date of such publication, and, after considering any objections or suggestions that may be submitted, the Local Government may finally sanction the scheme as published.

(Secs. 17-20.)

lished either wholly or subject to such modifications as may seem necessary or may reject the scheme.

Application
of sections 13
to 16 to
extension
schemes.

17. The provisions of sections 13 to 16 (both inclusive) shall apply to any extension of the original scheme which may subsequently be proposed by the Board.

Acquisition
of land for
waterworks.

18. When such scheme or any subsequent scheme has been finally sanctioned under section 16 the land which is required for the purpose of the waterworks included in such scheme, together with so much land on either side thereof as the Local Government may deem necessary for the construction or support of the waterworks, may be acquired under the provisions of the law for the time being in force for the acquisition of land for public purposes and shall then vest in the Board.

Right of user
for aqueducts,
conduits, and
lines of mains
or pipes.

19. (1) The Board may from time to time place and maintain aqueducts, conduits and lines of mains or pipes over, under, along or across any immovable property without acquiring the same:

Provided that—

- (a) the Board shall not acquire any right other than that of user in the property over, under, along or across which any such aqueduct, conduit or line of mains or pipes is placed;
- (b) except as hereinafter provided, the Board shall not exercise these powers in respect of any property vested in or under the control or management of the Local Government or of any Local Authority or Railway or Tramway Company without the permission of the Local Government or of such Local Authority or Company;
- (c) the Board shall, in the exercise of the powers conferred by this section cause as little damage, detriment and inconvenience as may be, and, except in the case of property referred to in proviso (b), shall make full compensation for any damage, detriment or inconvenience caused by them or anyone employed by them.

(2) The Board may, at any time, for the purpose of examining, repairing, altering or removing any aqueduct, conduit or line of mains or pipes enter on the property, other than that referred to in clause (b) of subsection (1), over, under, along or across which such aqueduct, conduit, or line of mains or pipes has been placed.

Application
of Act
XVIII
of 1885
to lands in
respect of

20. The provisions of sections 4 to 14 (both inclusive) of the Land Acquisition (Mines) Act, 1885,^[1] shall apply to a right of user acquired XVIII of 1885.

(Sec. 21.)

by the Board under section 19 in the same manner as if the land in respect of which such right is enjoyed had vested in the Board after acquisition thereof under the law for the time being in force for the acquisition of land for public purposes: which right of user is enjoyed.

Provided that the notice required under section 4 of the said Act shall be given to the Board by the person referred to in that section sixty days before the commencement of working within two hundred feet measured horizontally, on either side of any aqueduct, conduit or line of mains or pipes;

Provided also that a further notice shall be given to the Board by such person sixty days before he commences to draw pillars from under land within such distance of two hundred feet.

21. Where the exercise of any of the powers conferred by this Act involves the placing of any waterwork in, under, over, along or across any property vested in, or under the control or management of, the Local Government or a Local Authority or a Railway or Tramway Company, or the repair, alteration or removal of any waterwork so placed, the following provisions shall have effect, namely:— Restrictions on exercise of powers in case of lands belonging to Government, a Local Authority or a Railway or Tramway Company.

(a) Not less than one month before commencing the execution of the work the Board shall serve on the Local Government, Local Authority or Company, as the case may be, a notice in writing describing the proposed work together with a section or plan thereof on such scale as the Local Government may by rule prescribe, and intimating the manner in which and the time at which it is proposed to interfere with the property or alter or repair any existing work.

(b) On receipt of such notice the Local Government, Local Authority or Company, as the case may be, may require the Board to give further information in relation to the work proposed, or may grant permission for the execution of the work subject to such reasonable conditions as it may seem necessary to impose as to the payment of compensation for expenses to be incurred in consequence of the exercise of the powers of the Board, or as to the time or mode of execution, of any work, or as to any other thing connected with or relative to any work undertaken by the Board under those powers:

Provided that, in the case of a Railway or Tramway Company, no such permission shall be given and no such compensation shall be settled except with the consent in writing of the Governor General in Council.

(Secs. 22-23.)

- (c) If the Local Government or Local Authority fails to give notice in writing to the Board of approval or disapproval within one month, the Local Government or Local Authority, as the case may be, shall be deemed to have approved of the work, section, and plan, and the Board after giving not less than forty-eight hours' notice in writing may proceed to carry out the work in accordance with the notice and the section and plan served under clause (a).
- (d) Where the work to be executed consists of the repair, renewal or amendment of existing works of which the character or position is not to be altered, the Board shall, except in cases of emergency, give to the authority concerned not less than forty-eight hours' notice in writing of their intention to execute such work, and on the expiry of such notice, such work shall be commenced forthwith and shall be carried on with all reasonable despatch, and, if possible, both by day and night, till completed.
- (e) Where the work to be executed under clause (d) is urgently necessary in order to maintain the supply of water without interruption or is such that delay would be dangerous to human life or property, such work may be commenced forthwith without notice.

22. (1) If any dispute arises:—

- (a) between the Board and any person regarding the amount of compensation payable by the Board under proviso (c) to sub-section (1) of section 19;
- (b) between the Board and a Local Authority in consequence of the Local Authority refusing the permission referred to in proviso (b) to sub-section (1) of section 19 and in section 21, or prescribing any condition under clause (b) of section 21, or otherwise in respect of the exercise of the powers conferred by this Act;

it shall be determined by such officer as the Local Government may appoint either generally or specially in this behalf.

(2) An appeal from the determination of the officer so appointed shall lie to such officer as the Local Government may appoint and the order of such officer shall be final.

23. When the Board in exercise of the powers conferred by or under this Act opens or breaks up the soil of any road, railway or tramway, they shall—

- (a) immediately cause the part opened or broken up to be fenced and guarded;

Decision of disputes regarding compensation and other matters and appeal therefrom.

Precautions to be taken when breaking up road, railway or tramway.

(Sec. 24.)

- (b) before sunset cause lights sufficient for the warning of passengers to be set up and maintained against or near both ends of the part broken up or opened;
- (c) with all reasonable speed fill in the ground and reinstate and make good the soil opened or broken up, and carry away the rubbish occasioned by such opening or breaking up;
- (d) after reinstating and making good the soil broken or opened up, keep the same in good repair for three months and for any further period not exceeding nine months during which the subsidence continues; and
- (e) compensate the Local Authority or Company to which the road, railway and tramway belongs for any damage caused and not repaired.

24. When a scheme has been finally sanctioned under section 16, the Board shall proceed to carry it out, and for this purpose shall, subject to the provisions of this Act and to any rules made in this behalf by the Local Government, have power—

- (a) to construct, maintain, repair, renew, alter, enlarge and extend reservoirs, mains, pipes and other waterworks upon or under the lands mentioned in sections 18 and 19,
- (b) to enter upon any such land and take levels of the same and set out such parts thereof as they think necessary and dig and break up the soil of such lands and trench the same;
- (c) subject to the provisions of section 3 of the Land Acquisition (Mines) Act, 1885,^[1] remove or use all earth, stone, mines, minerals, trees or other things dug or got out of the land acquired;
- (d) to take, intercept and impound any water flowing upon any land acquired under section 18;
- (e) to make and maintain all such cuts, channels, catch waters, tunnels, pipes, conduits, culverts, drains, sluices, overflows, waste water channels, gauges, filter-beds, tanks, banks, walls, bridges, machinery and appliances as may be necessary or convenient in connection with, or subsidiary to, any of their waterworks;
- (f) to open and break up the soil of any road, railway or tramway within the area of supply;
- (g) to open and break up any sewer, drain or tunnel in or under such road, railway, or tramway;

[1] Printed in the General Acts, 1879-1886, Ed. 1903, p. 535.

(Secs. 25-26.)

(h) to do all other acts necessary for the due supply of water within the area of supply.

Map to be prepared and maintained.

25. Within six months from the completion of the construction of the waterworks according to the scheme and plans sanctioned by the Local Government, the Board shall cause a map to be made of the area within which such waterworks have been laid on a scale to be prescribed by rule on this behalf and shall cause to be marked thereon the course and situation of all existing mains, pipes or other waterworks for the collection, passage or distribution of water and underground works belonging to them in order to show all such underground works, and shall within one month from the making of any alteration or addition cause the said map to be from time to time corrected, and such map with the date expressed thereon of the last time when the same shall have been so corrected shall be kept in the office of the Board, and shall be open to inspection.

Power to make rules.

26. The Local Government may, from time to time, make rules^[1] consistent with this Act:—

- (a) to fix the time within which a scheme is to be submitted and waterworks are to be constructed;
- (b) to prescribe and define the mutual relations to be observed between the Board and the District Board and the Mines Board of Health;
- (c) as to the preparation and submission of plans and estimates for the construction and maintenance of waterworks, and as to the conditions subject to which such plans and estimates may be sanctioned;
- (d) to prescribe the mains or pipes in which fireplugs are to be fixed, and the places at which keys of the fireplugs are to be deposited;
- (e) to prescribe the pressure at which water supplied by the Board is to be laid and the hours during which such pressure is to be maintained;
- (f) as to the periodical analysis by a qualified analyst of the water supplied by the Board and the action to be taken on his report;
- (g) as to the management of reservoirs, filter-beds or other waterworks;
- (h) as to the acquisition of land for the purposes of water-works;
- (i) as to the repayment of loans taken by the Board.

[¹] For rules made under this section, see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VII.

the communication pipe of the consumer and the main or pipe belonging to the Board, and the cost of such meter shall be borne by the Board.

Presumption
as to correct-
ness of
meters.

33. Whenever water is supplied under this Act through a meter it shall be presumed that the quantity indicated by the meter has been consumed until the contrary is proved.

Testing of
meters.

34. (1) If the consumer desires to have the meter tested, he may send an application to the Board together with a fee of five rupees;

(2) On receipt of such application and fee the Board shall forthwith cause such meter to be tested at a time and place to be specified in a notice to such consumer;

(3) If such meter is found on being tested to be correct by more than four *per centum* the said fee shall be returned to the person who sent it.

Replacement
of broken
meters.

35. The Board shall replace any meter which is out of repair.

Water for
other
than
domestic
purposes.

36. The Board may supply water for other than domestic purposes at such rates for every one thousand gallons as may be determined by the Board at a meeting and approved by the Local Government:

Provided that no such supply shall be given or continued, if the same would interfere with the sufficiency of the supply of water for domestic purposes.

Communica-
tion pipes,
etc., to be
made to
satisfaction
of Board.

37. (1) The communication pipes and all fittings thereon leading water from the mains and pipes of the Board into any colliery, premises or land, and the pipes, works, and fittings within such colliery, premises or land shall in all cases be executed subject to the inspection and satisfaction of the Board.

(2) Such communication pipes and fittings may be made by the servants and workmen of the Board upon such terms as may be agreed upon between the Board and the person requiring the supply, or subject to such charges as may be fixed by the Board, and the Board may require the amount necessary for the execution of such works to be paid or deposited before such works are commenced.

(3) Except in the case of a special agreement to the contrary, all such communication pipes and fittings shall be maintained in substantial repair by, and at the cost of, the owner of the colliery, premises or land which they connect with the mains or pipes of the Board.

Power to
enter
premises.

38. (1) Any officer authorised in that behalf by the Board may at any time enter into or on any colliery, premises or land supplied with water aforesaid in order to examine all pipes, works and fittings connected with the supply of water and to ascertain whether there be any

(Secs. 39-42.)

(2) If such officer at any such time be refused admittance into such colliery, premises or land for the purposes aforesaid, or be prevented from making such examination, the Board may forthwith cut off the supply of water from such colliery, premises or land.

39. In the event of any pipes, works or fittings connected with the supply of water to any colliery, premises or land being at any time found on examination by any officer of the Board authorised in that behalf, to be out of repair to such an extent as to cause waste of water the Board may cause the water to be turned off from such colliery, premises, or land after giving notice in writing of not less than twenty-four hours, and may recover from the occupier of such-colliery, house or land the expense incurred for turning off the water.

Power to turn off water when pipes are out of repair.

40. (1) The Board may, with the sanction of the Local Government, make by-laws for preventing the waste, undue consumption, misuse or contamination of water, and may by such by-laws prescribe the size, nature, materials, workmanship and strength and the mode, arrangement, connection, disconnection, alteration and repair of pipes, meters, cocks, ferrules, valves, baths, cisterns, and other apparatus to be used, and forbid any arrangements and the use of any water fittings which may allow or tend to waste, undue consumption, misuse, erroneous measurement or contamination.

Power of Board to make by-laws for the prevention of waste and to prescribe water fittings.

(2) In case of failure of any person to observe such by-laws the Board may, if they think fit, after twenty-four hours' notice in writing, enter and, by or under the direction of their duly authorised officer, at the cost of such person, repair, replace or alter any water fittings belonging to or used by him.

(3) By-laws made under this section shall, when they have obtained the sanction of the Local Government, be published in the official Gazette.

41. If any person supplied with water neglects to pay therefor at the rates prescribed under this Act at the times of payment thereof, the Board may turn off the water from the colliery, premises or land in respect of which such rate or charge is payable, and may recover the expense of turning off the water from such person.

Power to cut off water on neglect.

42. (1) Before the supply of water from the mains or pipes of the Board to any colliery, premises or land is finally sanctioned, the Board may cause all the works, pipes and fittings within the said colliery, premises or land to be inspected by an officer appointed by them in that behalf.

Inspection of works and fittings before supply of water is finally sanctioned.

(2) The cost of such inspection shall be payable by the person applying for such connection at such rates as the Board in meeting shall from time to time determine.

(Secs. 33-38.)

the communication pipe of the consumer and the main or pipe belonging to the Board, and the cost of such meter shall be borne by the Board.

Presumption
as to correct-
ness of
meters.

33. Whenever water is supplied under this Act through a meter it shall be presumed that the quantity indicated by the meter has been consumed until the contrary is proved.

Testing of
meters.

34. (1) If the consumer desires to have the meter tested, he may send an application to the Board together with a fee of five rupees;

(2) On receipt of such application and fee the Board shall forthwith cause such meter to be tested at a time and place to be specified in a notice to such consumer;

(3) If such meter is found on being tested to be correct by more than four *per centum* the said fee shall be returned to the person who sent it.

Replacement
of broken
meters.

35. The Board shall replace any meter which is out of repair.

Water for
other
than
domestic
purposes.

36. The Board may supply water for other than domestic purposes at such rates for every one thousand gallons as may be determined by the Board at a meeting and approved by the Local Government:

Provided that no such supply shall be given or continued, if the same would interfere with the sufficiency of the supply of water for domestic purposes.

Communica-
tion pipes,
etc., to be
made to
satisfaction
of Board.

37. (1) The communication pipes and all fittings thereon leading water from the mains and pipes of the Board into any colliery, premises or land, and the pipes, works, and fittings within such colliery, premises or land shall in all cases be executed subject to the inspection and satisfaction of the Board.

(2) Such communication pipes and fittings may be made by the servants and workmen of the Board upon such terms as may be agreed upon between the Board and the person requiring the supply, or subject to such charges as may be fixed by the Board, and the Board may require the amount necessary for the execution of such works to be paid deposited before such works are commenced.

(3) Except in the case of a special agreement to the contrary, communication pipes and fittings shall be maintained in repair by, and at the cost of, the owner of the premises to which they connect with the mains or pipes of the Board.

to
enter
premises.

38. (1) Any officer authorised in that behalf by the Board may at any time enter into or on any colliery, premises or land to which water aforesaid in order to examine all pipes, works, and fittings connected with the supply of water and to ascertain the use of water for other than domestic purposes.

(Secs. 47-50.)

- (2) to the payment of the salaries of the establishment employed by the Board;
- (3) to the payment of the expenses of audit;
- (4) to the payment of expenses incurred in the construction, repair and maintenance of waterworks, and in the performance of duties imposed by this Act;
- (5) to the payment, at such rates as the Local Government may direct, of the travelling expenses incurred by officers of the Board in the performance of their duties, and by Members of the Board in attending meetings of the Board.

47. (1) The Chairman shall, at a meeting to be held in the month of December in each year, lay before the Board an estimate of the income and expenditure of the Board for the next ensuing financial year. Annual estimate of Income and expenditure.

(2) Every such estimate shall make provision for the due fulfilment of all the liabilities of the Board and for the efficient administration of the Act.

(3) Every such estimate shall be prepared in such form and shall contain such details as the Local Government may from time to time direct.

(4) A copy of every such estimate shall be sent to each Member of the Board at least ten clear days before the date of the meeting at which the estimate is to be laid before the Board.

48. The Board shall consider every estimate so laid before them and shall sanction the same, either without alteration or with such alterations as they may think fit. Consideration of estimate by Board.

49. (1) Every such estimate, as sanctioned by the Board, shall be submitted to the Commissioner of the Division who may at any time within two months after the receipt of the same— Submission of Estimate to Commissioner.

(a) approve the estimate, or

(b) disallow the estimate or any portion thereof and return the estimate to the Board for amendment.

(2) If any estimate is so returned to the Board they shall forthwith proceed to amend it, and shall resubmit the estimate, as amended, to the Commissioner who may then approve it or refer it to the Local Government whose decision shall be final.

50. (1) A meeting of the Board shall be held as soon as may be expedient after the day appointed under section 6, sub-section (1), and the Chairman shall at such meeting lay before the Board an estimate of the Estimate of expenditure on commencement.

expenditure of the Board for the portion of the year which on the said day has not expired.

(2) The provisions of sections 47, 48 and 49 shall apply to the said estimate.

Supple-
mentary
Estimates.

51. The Board may at any time during the year for which any estimate has been sanctioned, cause a supplementary estimate to be prepared and laid before them at a special meeting, and the provisions of sections 47, 48 and 49 shall apply to such supplementary estimate.

Restrictions
on expendi-
ture not
included in
budget.

52. (1) No sum shall be expended by or on behalf of the Board unless the expenditure of the same is covered by a current budget grant or can be met by re-appropriation or by drawing on the closing balance.

(2) The closing balance shall not be reduced below such amount as may from time to time be fixed by the Local Government.

(3) The following items shall be excepted from the provision of sub-sections (1) and (2), namely:—

- (a) repayment of monies belonging to contractors or other persons and held in deposit, and of monies collected by or credited to the Board by mistake;
- (b) payments due under a decree or order of a Court passed against the Board, or against the Chairman *ex-officio*, or under an award of arbitrators;
- (c) any sums payable under a compromise of any suit or other legal proceeding;
- (d) sums payable under this Act by way of compensation; and
- (e) payments required to meet some pressing necessity.

Power to
make
rules.

53. The Local Government may from time to time make rules^[1] consistent with this Act to regulate—

- (a) the custody of the Jharia Water Fund;
- (b) the keeping of proper accounts;
- (c) the forms and registers to be used;
- (d) the audit of accounts;
- (e) the preparation and submission of estimates;
- (f) the amount of the closing balance.

[1] For rules made under this section, see the Bihar and Orissa Statutory Rules and Orders, 1918, Vol. I, Pt. VII.

(Secs. 54-59.)

CHAPTER VI.

TONNAGE AND ROYALTY CESSES.

54. From and after the commencement of this Act there shall be ^{Levy of} levied by the Board within the area to which this Act applies:— ^{Cesses.}

- (1) a tonnage cess on the annual despatches of coal and coke from each mine in the said area;
- (2) a cess on royalties from mines in the said area.

55. The tonnage cess shall be assessed on the annual despatches of ^{Tonnage} coal and coke from each mine at such rate, not exceeding seven pies for ^{Cess.} each ton of coal, as may be determined from time to time by the Board with the approval of the Local Government, and shall be payable by the owner of each mine.

56. (1) The cess on royalties shall be paid by each person who receives ^{Royalty Cess.} royalty, from any mine situated within the said area, and shall be assessed at such rate, not exceeding five *per centum* of the assessed amount, of the royalty received, as the Board may, from time to time, with the approval of the Local Government, determine.

(2) Where any person who receives royalty himself pays royalty to a superior landlord in respect of the same mine, the cess payable by such person shall be assessed on the net amount received by him after deducting the amount so paid.

(3) Nothing in any contract, whether made before or after the commencement of this Act, shall entitle a lessor to claim or recover from a lessee the cess leviable under sub-section (1) in respect of any royalties received by the lessor.

57. When the rates of tonnage cess and royalty cess to be levied within the said area shall have been determined for any year, the Board shall cause such rates to be published in the official Gazette. ^{Publication of yearly rates in official Gazette}

58. On the commencement of this Act, and thereafter at the close of each calendar year, the Board shall cause a notice to be served on each mine owner requiring such owner to lodge before the end of January in the office of the Board a return of the quantity of coal and coke despatched from his mine during the previous calendar year, and of the royalties payable by him in respect of that quantity. ^{Notice to furnish returns.}

59. If such return be not furnished within the period prescribed in the preceding section or within any extended time allowed by the Board, or, if the Board deems that any return made in pursuance of such notice is untrue or incorrect, the Board shall proceed to ascertain and determine ^{If return not furnished or incorrect, Board to assess}

quantity des- by such ways or means as to them shall seem expedient the quantity of
patched. coal and coke despatched from the mine concerned, and for this purpose
shall have power to require the production of any register kept by a mine
owner.

Notice to owner of quantity ascertained. **60.** So soon as the Board shall have ascertained and determined under the preceding section the quantity of coal and coke despatched from any mine they shall cause to be served upon the owner of such mine a notice informing him of the quantity so ascertained and determined.

Notice of cess payable and dates. **61.** (1) When the quantity of coal and coke despatched and the amount of royalties have been ascertained and determined, the Board shall cause to be served on the owner of every mine and on every receiver of royalty, a notice showing the amount of tonnage cess or royalty cess, respectively, payable in respect of such quantity or amount, and specifying the date from which such cess will be payable.

(2) Such cess shall be payable by such owner or royalty-receiver in such instalments and on such dates as the Local Government may by rule determine.

Payment to Board and deposit to credit of Water Fund. **62.** The cesses leviable under this Act shall be paid to the Board, and the Board shall grant receipts therefor, and shall deposit the amounts so received to the credit of the Jharia Water Fund in the district Treasury or a Sub-Treasury.

Realisation of arrears. **63.** The Board shall at the end of each year or at such other interval as the Local Government may by rule prescribe send a list of owners and receivers of royalties within the district who have failed to pay the amounts due for cess, and the Deputy Commissioner may then realise such amounts from the defaulters by any process provided by any law for the time being in force for the recovery of public demands.

Power to make rules. **64.** The Local Government may from time to time make rules^[1] consistent with this Act to provide for the following, namely:—

- (a) the manner of assessing and recovering the cesses payable under this Act;
- (b) the registration of owners of mines and receivers of royalties;
- (c) the form and service of notices;
- (d) the agency by which notices are to be served;
- (e) the local publication of rates;
- (f) the form of receipts to be granted

and other similar matters.

[¹] For rules made under this section, see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VII.

(Secs. 65-71.)

CHAPTER VII.

PENALTIES.

65. Any person who wilfully obstructs any person acting under the authority of the Board in setting out the line of works, or pulls up or removes any pillar, post or stake fixed in the ground for the purpose of setting out the line of such works, or defaces or destroys any works made for the same purpose, shall be liable on conviction to a penalty not exceeding fifty rupees. Penalty for obstructing the laying out of waterworks.

66. Any person who maliciously, wilfully or negligently breaks, injures, or opens any lock, cock, valve, pipe or other water-work belonging to the Board shall be liable on conviction to a fine not exceeding one hundred rupees. Penalty for causing damage to waterworks.

67. Any person who unlawfully obstructs the flow of, flushes, draws off, diverts or takes water from any waterwork belonging to or under the control or management of the Board, or from any water or stream by which such waterworks are supplied, shall be liable on conviction to a fine not exceeding one hundred rupees. Penalty for obstructing or drawing off water.

68. The occupier of any colliery, premises or land in which water supplied by the Board under this Act is from negligence, or other circumstances under the control of such occupier, wasted, or in whose colliery, premises or land the pipes, works or fittings for the supply of water are found to be out of repair to such an extent as to cause waste of water, shall be liable on conviction to a fine not exceeding twenty rupees. Penalty for waste of water by consumer.

69. Any person otherwise causing waste of water supplied by the Board shall be liable on conviction to a fine not exceeding five rupees. Penalty for waste in other cases.

70. Any person who—

- (a) uses for other than domestic purposes any water supplied under this Act for domestic purposes; or
- (b) where water is supplied under section 36 for a specified purpose, uses that water for any other purpose;

Penalty for misuse of water

shall be liable on conviction to a fine not exceeding fifty rupees, without prejudice to the right of the Board to recover from him the price of the water misused.

71. Any person who—

- (a) bathes in, at or upon any waterworks, or washes, throws or causes to enter therein any animals; or

Penalty for defiling water.

(b) throws any rubbish dirt, filth or other noisome thing into any waterworks, or washes or cleanses therein any cloth, wool, leather or skin of any animal, or any clothes or other things; or

(c) causes the water of any sink, sewer or drain, or of any steam engine or boiler or any other filthy water belonging to him or under his control to turn or be brought into any waterworks or does any other act whereby the water in any waterworks is found, or likely to be found,

shall be liable on conviction to a fine for every such offence not exceeding one hundred rupees.

Penalty for
tampering
with meters

72. Any person who—

(a) dishonestly alters the index to any meter or prevents any meter from duly registering the quantity of water supplied; or

(b) dishonestly obstructs or uses water belonging to the Board before it has been registered by a meter set up for the purpose of measuring the same; or

(c) wilfully or negligently injures or suffers to be injured any meter belonging to the Board or any fittings of any such meter,

shall be liable on conviction to a fine not exceeding one hundred rupees.

Penalty for
obstruction
to Board's
officers.

73. Any person who obstructs any officer of the Board in the discharge of his duties under this Act, or refuses or wilfully neglects to furnish him with the means necessary for making any entry, inspection, examination, or inquiry thereunder in relation to any waterworks, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Penalty for
giving false
returns.

74. Any person who makes, gives or delivers any notice or return required by or under this Act, which contains a statement, entry or detail which is not to the best of his knowledge or belief true, shall be punishable with fine which may extend to five hundred rupees.

75. Any person who—

(a) fails to comply with any requisition or order made under any provision of this Act or of any rule or order made thereunder; or

(b) contravenes any provision of this Act, or any rule or order thereunder, for the breach of which no penalty is otherwise

Penalty for
breach of
provisions of
Act, not
otherwise
provided for.

(Secs. 76-80.)

provided shall be liable on conviction to a fine not exceeding two hundred rupees, and, in the case of a continuing breach under clause (a) of this section, to a further fine which may extend to fifty rupees for every day during which the breach is proved to have been persisted in after the date of the receipt by him of the requisition or order referred to in that clause.

76. No prosecution shall be instituted against any owner, agent or manager of a mine, for any offence against this Act, or any rule or order thereunder, except at the instance of the Board.

Prosecution
of owner,
Agent or
Manager.

CHAPTER VIII.

MISCELLANEOUS.

77. All rules made and notifications issued under this Act shall be published in the official Gazette and on such publication shall have effect as if enacted in this Act.

Publication
of rules,
orders, and
notifications.

78. (1) Every notice, bill, and form or notice of demand under this Act may be served personally on, or presented to, the person to whom the same is addressed or his agent or manager, or may be sent by registered post to such person or his agent or manager.

Service of
notices, bills,
forms or
notices of
demand.

(2) Service of a notice, bill, form or demand on an incorporated company may be effected by serving it on the Secretary, local manager or other principal officer of the corporation; or by registered post addressed to the Chief Officer of the corporation in British India.

79. (1) An appeal against the assessment of tonnage cess or royalty cess shall lie to the Commissioner of the Division or to such other officer as may be empowered by the Local Government in this behalf.

Appeals.

(2) No appeal shall lie in respect of the assessment unless it is preferred within sixty days from the time when the demand for the cess is made.

80. (1) If at any time it appears to the Local Government on the report of the Commissioner of the Division that the Board have made default in performing any duty imposed on them by or under this Act, the Local Government may, by an order in writing, fix a time for the performance of that duty.

Powers of
Local
Government
in case of
defaults.

(2) If the Board fail to perform that duty within the period so fixed, the Local Government may order it to be performed by any other agency,

(Secs. 81-82.)

and may direct that the expense of performing it shall be paid within such time as it may fix from the Jharia Water Fund.

(3) If the expense is not so paid, the Deputy Commissioner, with the previous sanction of the Local Government, may make an order directing the person having the custody of the balance of the Jharia Water Fund to pay the expense, or so much thereof as is from time to time possible, from the balance, in priority to any or all other charges against the same.

Power to
supersede
Board in case
of incompetency,
default or
abuse of
powers.

81. If, in the opinion of the Local Government, the Board are not competent to perform, or persistently make default in the performance of, the duties imposed on them by or under this Act, or exceed or abuse their powers, the Local Government may, by an order published, with the reasons for making it, in the official Gazette declare the Board to be incompetent or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order.

Consequences
of superses-
sion.

82. When an order of supersession has been passed under the last preceding section, the following consequences shall ensue:—

- (a) all the members of the Board shall, as from the date of the order vacate their offices as such members,
- (b) all the powers and duties of the Board shall during the period of supersession be exercised and performed by such person or persons as the Local Government may direct;
- (c) all property vested in the Board shall during the period of supersession vest in the Local Government.

BIHAR AND ORISSA ACT 4 of 1914.
(THE BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT, 1914.)

CONTENTS.

PART I

PRELIMINARY.

SECTION.

1. Short title, commencement and extent.
2. Repeal.
3. Definitions.

PART II

FILING, SERVICE AND EFFECT OF CERTIFICATES, AND HEARING OF OBJECTIONS THERETO.

4. Filing of certificate for public demand payable to Collector.
5. Requisition for certificate in other cases.
6. Filing of certificate on requisition.
7. Service of notice and copy of certificate on certificate-debtor.
8. Effect of service of notice of certificate.
9. Filing of petition denying liability.
10. Hearing and determining of such petition.
11. Power to amend certificate by addition, omission or substitution of parties.

PART III

EXECUTION OF CERTIFICATES.

12. Who may execute certificate.
13. Transmission of certificate to another Certificate-officer for execution.
14. When certificate may be executed.
15. Modes of execution.
16. Certain sales by whom to be held.
17. Interest, costs and charges recoverable.

Attachment.

18. Property liable to attachment and sale in execution of a certificate.
19. Partial exemption of agricultural produce.
20. Payment of moneys, contrary to attachment, to be void.

Investigation of claims and objections.

21. Investigation by Certificate-officer.
22. Evidence to be adduced.
23. Release of property from attachment or sale.
24. Disallowance of claim to property attached.
25. Saving of suits to establish right to attached property.

Sale.

26. Purchaser's title.
27. Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.

Setting aside Sale.

SECTION.

28. Application to set aside sale of immovable property on deposit.
29. Application to set aside sale of immovable property on ground of non-service of notice or irregularity.
30. Application to set aside sale on ground that certificate-debtor had no saleable interest or that property did not exist.
31. Sale when to become absolute or be set aside.

Disposal of Proceeds of Execution.

32. Disposal of proceeds of execution.

Obstruction of Possession after Sale.

33. Application by purchaser resisted or obstructed in obtaining possession of immovable property.
34. Procedure on such application.
35. Dispossession by purchaser.
36. *Bonâ fide* claimant to be restored to possession.
37. Orders conclusive subject to suit in a Civil Court.

Arrest, Detention and Release.

38. Power of arrest and detention.
39. Release from arrest and re-arrest.
40. Detention in, and release from, prison.
41. Release on ground of illness.
42. Prohibition of arrest or detention of women and persons under disability.

PART IV.

REFERENCE TO CIVIL COURT.

43. Suit in Civil Court to have certificate cancelled or modified.
44. Grounds for cancellation or modification of certificate by Civil Court.
45. Suit to recover possession of, or to set aside sale, of immovable property where notice of certificate not served.
46. General bar to jurisdiction of Civil Courts, save where fraud alleged.

PART V.

RULES.

47. Effect of rules in Schedule II.
48. Power of Board of Revenue to make rules as to procedure.
49. Publication and effect of rules made under section 48.

PART VI.

SUPPLEMENTAL PROVISIONS.

50. Persons under disability.
51. Continuance of certificates.
52. Procedure on death of certificate-debtor.
53. Cancellation of certificates.
54. Costs.
55. Compensation.

SECTION.

56. Entry into dwelling-house.
57. Application of Act XVIII of 1850.
58. Officers to have powers of Civil Court for certain purposes.
59. Control over officers.
60. Appeal.
61. Bar to second appeals.
62. Revision
63. Review.
64. Saving of other Acts.
65. Application of the Indian Limitation Act, 1908.
66. Certificate-officer deemed to be a Court.
67. Penalties.
68. Signature of documents by ministerial officers.
69. Amendments of the Bengal Tenancy Act, 1885, the Orissa Tenancy Act, 1913, and the Chota Nagpur Tenancy Act, 1908.

SCHEDULE I.—PUBLIC DEMANDS.

SCHEDULE II.—RULES.

SIGNATURE AND VERIFICATION OF REQUISITIONS FOR CERTIFICATES.

RULE:

1. Signature and verification of requisitions for certificate.

SERVICE OF NOTICE.

2. Mode of service.
3. Service on certificate-debtor or his agent.
4. Service on adult male member of certificate-debtor's family.
5. Person served to sign acknowledgment.
6. Procedure where certificate-debtor refuses to accept service or cannot be found.
7. Endorsement of time and manner of service.
8. Examination of serving officer.
9. Service by post

PETITIONS UNDER SECTION 9, DENYING LIABILITY.

10. Signature and verification of petition denying liability.
11. Transfer of such petitions.

EXECUTION OF CERTIFICATES.

12. Execution in another district

Attachment

13. Attachment of movable property (other than agricultural produce) in possession of certificate-debtor.
14. Attachment of agricultural produce.
15. Provisions as to agricultural produce under attachment.
16. Attachment of debt, share, and other movable property not in possession of certificate-debtor.
17. Attachment of share in movables.
18. Attachment of salary or allowances of public officer or servant of Railway Company or Local Authority.
19. Attachment of negotiable instruments.
20. Attachment of property in custody of Court or public officer.
21. Attachment of decree.
22. Attachment of immovable property.
23. Removal of attachment on satisfaction or cancellation of certificate.

554 *The Bihar and Orissa Public Demands Recovery [B. & O. Act
Act, 1914.*

Sale generally.

RULE.

24. Power to order sale of attached property.
25. Proclamation of sale by public auction.
26. Mode of making proclamation.
27. Time of sale.
28. Adjournment or stoppage of sale.
29. Defaulting purchaser answerable for loss on re-sale.
30. Restriction on bidding or purchase by officers.

Sale of Movable Property.

31. Sale of agricultural produce.
32. Special provisions relating to growing crops.
33. Sale by public auction.
34. Irregularity not to vitiate sale, but any person injured may sue.
35. Delivery of movable property, debts and shares.
36. Transfer of negotiable instruments and shares.
37. Vesting order in case of other property.

Sale of Immovable Property.

38. Sale of tenure or holding at fixed rates, subject to registered and notified incumbrances.
39. Sale of tenure or holding at fixed rates, with power to avoid all incumbrances.
40. Sale of occupancy holding, with power to avoid all incumbrances.
41. Rules 38 to 40 not to apply in certain cases to certificate-holders who are co-sharer landholders.
42. Postponement of sale to enable certificate-debtor to raise amount due under certificate.
43. Prohibition of purchase of tenure or holding by certificate-debtor.
44. Deposit by purchaser and re-sale in default.
45. Time for payment of purchase-money in full.
46. Procedure in default of payment.
47. Notification on re-sale.
48. Bid of co-sharer to have preference.
49. Return of purchase-money in certain cases.
50. Certificate to purchaser.
51. Delivery of property in occupancy of certificate-debtor.
52. Delivery of property in occupancy of tenant or other person.

Arrest and Detention.

53. Discretionary power to permit certificate-debtor to show cause against detention in prison.
54. Subsistence allowance.

SUPPLEMENTAL.

55. Register of certificates.
56. Payment by instalments.
57. Remittance to certificate-officer of sums received under a certificate transferred for execution.
58. Entry of satisfaction.
59. Communication of satisfaction to other persons.

FORMS.

60. Forms in Appendix.
61. Other forms.

APPENDIX—

- Form No. 1. Certificate of Public Demand.
- Form No. 2. Requisition for a Certificate.
- Form No. 3. Notice to Certificate-debtor
- Form No. 4. Petition denying Liability
- Form No. 5. Notice to show Cause why Sale should not be set aside.
- Form No. 6. Warrant of Arrest.
- Form No. 7. to Civil Prison.
- Form No. 8. Certificate-debtor.
- Form No. 9.
- Form No. 10. Warrant of sale of Property.
- Form No. 11. Notice of the day fixed for Settling a Sale Proclamation.
- Form No. 12 Proclamation of Sale.
- Form No. 13 Order on the Nazir for causing publication of Proclamation of Sale.
- Form No. 14. Certificate, by Officer holding a Sale, of the Deficiency of price on a Re-sale of Property by reason of the Purchaser's Default.
- Form No. 15. Certificate of Sale of Land.
- Form No. 16. Order for Delivery to Certified Purchaser of Land at a Sale in Execution.
- Form No. 17. Notice to show cause why Warrant of Arrest should not issue

SCHEDULE III —AMENDMENTS.

- Part I.—Amendments of the Bengal Tenancy Act, 1885.
- Part II.—Amendments of the Orissa Tenancy Act, 1913
- Part III.—Amendments of the Chota Nagpur Tenancy Act, 1908.

BIHAR AND ORISSA ACT 4 OF 1914.

(THE BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT, 1914.)^[1]

(1st July, 1914.)

An Act to consolidate and amend the law relating to the recovery of Public Demands in Bihar and Orissa.

Whereas it is expedient to consolidate and amend the law relating to the recovery of public demands in Bihar and Orissa;

55 & 54
Vict., c. 14. And whereas the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892,^[2] to the passing of this Act;

It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be called "The Bihar and Orissa Public Demands Recovery Act, 1914;" Short title, commencement and extent.

(2) It shall come into force^[3] on such date as the Local Government may appoint by notification in the *Bihar and Orissa Gazette*; and

(3) It extends to the whole of Bihar and Orissa except the Districts of Angul and Sambalpur.

2. The following enactments are hereby repealed, namely:—

Repeal.

(a) the Public Demands Recovery Act, 1895, and

(b) the Bengal Public Demands Recovery (Amendment) Act, 1897.

3. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(1) "certificate-debtor" means the person named as debtor in a certificate filed under this Act, and includes any person whose name is substituted, or added as debtor by the Certificate-officer;

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the *Bihar and Orissa Gazette*, 1913, Pt. V, pp. 45-47; for the Report of the Select Committee, see *ibid*, 1914, Pt. V, pp. 1-8; for Proceedings in Council, see *ibid*, Pt. VI, pp. 323-344.

LOCAL EXTENT.—See section 1 (3) above.

^[2] Printed in the Collection of Statutes relating to India, 1913, Vol. II, p. 804.

^[3] The Act came into force on the 1st November, 1914, see Notification, No. 7510-R, dated the 5th October, 1914, published in the *Bihar and Orissa Gazette*, 1914, Pt. II, p. 2014.

(Secs. 4-5.)

- (2) "certificate-holder" means the Secretary of State for India in Council or other person in whose favour a certificate has been filed under this Act, and includes any person whose name is substituted or added as creditor by the Certificate-officer;
- (3) "Certificate-officer" means a Collector, a Subdivisional officer, and any officer appointed by a Collector, with the sanction of the Commissioner, to perform the functions of a Certificate-officer under this Act
- (4) "movable property" includes growing crops;
- (5) "prescribed" means prescribed by rules;
- (6) "public demand" means any arrear or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon up to the date on which a certificate is signed under Part II; and
- (7) "rules" means rules and forms contained in Schedule II or made under section 48.-

PART II.

FILING, SERVICE AND EFFECT OF CERTIFICATES, AND HEARING OF OBJECTIONS THERETO.

4. When the Certificate-officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate in the prescribed form, stating that the demand is due and shall cause the certificate to be filed in his office.

5. (1) When any public demand payable to any person other than the Collector is due, such person may send to the Certificate-officer a written requisition in the prescribed form:

Provided that in the case of an order framed by a liquidator under the Co-operative Societies Act, 1912, the written requisition shall be sent by him to the Registrar of Co-operative Societies, Bihar and Orissa.

(2) Every such requisition shall be signed and verified in the prescribed manner, and, except in such cases as may be prescribed, shall be chargeable with a fee of the amount which would be payable under the Court-fees Act, 1870, in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.

(Secs. 6-10.)

6. On receipt of any such requisition, the Certificate-officer, if he is ^{Filing of} satisfied that the demand is recoverable and that recovery by suit is not ^{certificate on} barred by law, may sign a certificate, in the prescribed form, stating that ^{requisition.} the demand is due; and shall include in the certificate the fee (if any) paid under section 5, sub-section (2); and shall cause the certificate to be filed in his office.

7. When a certificate has been filed in the office of a Certificate-officer under section 4 or section 6, he shall cause to be served upon the certificate-debtor, in the prescribed manner, a notice in the prescribed form and a ^{Service of} copy of the certificate. ^{notice and} ^{copy of cer-} ^{tificate on} ^{certificate-} ^{debtor.}

8. From and after the service of notice of any certificate under section 7 upon a certificate-debtor,— ^{Effect of} ^{service of} ^{notice of} ^{certificate.}

(a) any private transfer or delivery of any of his immovable property situated in the district, or, in the case of a Revenue-paying Estate, borne on the revenue-roll of the district in which the certificate is filed, or of any interest in any such property, shall be void against any claim enforceable in execution of the certificate; and

(b) the amount due from time to time in respect of the certificate shall be a charge upon such property, to which every other charge created subsequently to the service of the said notice shall be postponed.

9. (1) The certificate-debtor may, within thirty days from the service ^{Filing of} of the notice required by section 7, or, where the notice has not been duly ^{petition} served, then within thirty days from the execution of any process for ^{denying} enforcing the certificate, present to the Certificate-officer in whose office ^{liability.} the certificate is filed, or to the Certificate-officer who is executing the certificate, a petition, in the prescribed form, signed and verified in the prescribed manner, denying his liability, in whole or in part.

(2) If any such petition is presented to a Certificate-officer other than the Certificate-officer in whose office the original certificate is filed, it shall be sent to the latter officer for disposal.

10. The Certificate-officer in whose office the original certificate is ^{Hearing and} filed shall hear the petition, take evidence (if necessary), and determine ^{determining} whether the certificate-debtor is liable for the whole or any part of the ^{of such} amount for which the certificate was signed; and may set aside, modify ^{petition.} or vary the certificate accordingly:

Provided that, if the Certificate-officer is not the Collector, and considers that the petition involves a *bonâ fide* claim of right to property,

(Secs. 11-14.)

he shall refer the petition to the Collector for orders; and the Collector, if he is satisfied that a *bonâ fide* claim of right to property is involved, shall make an order cancelling the certificate.

Power to
amend
certificate by
addition,
omission,
or substitu-
tion of
parties.

11. Subject to the law of limitation, the Certificate-officer may at any time amend a certificate by the addition, omission or substitution of the name of any certificate-holder or certificate-debtor, or by the alteration of the amount claimed therein :

Provided that when any such amendment is made a fresh notice and copy shall be issued as provided in section 7.

PART III.

EXECUTION OF CERTIFICATES.

Who may
execute
certificate.

12. A certificate filed under section 4 or section 6 may be executed by—

(a) the Certificate-officer in whose office the original certificate is filed, or

(b) the Certificate-officer to whom a copy of the certificate is sent for execution under section 13, sub-section (1).

Transmission
of certificate
to another
Certificate-
officer for
execution.

13. (1) A Certificate-officer, in whose office a certificate is filed may send a copy thereof, for execution, to any other Certificate-officer in the same district or to the Collector of any other district.

(2) When a copy of a certificate is sent to any such officer, he shall cause it to be filed in his office, and thereupon the provisions of section 8 with respect to certificates filed in the office of a Certificate-officer shall apply as if such copy were an original certificate :

Provided that it shall not be necessary to serve a second notice and copy under section 7.

When certi-
ficate may
be executed.

14. No step in execution of a certificate shall be taken until the period of thirty days has elapsed since the date of the service of the notice required by sections 7 and 11, or, when a petition has been duly filed under section 9, until such petition has been heard and determined :

Provided that, if the Certificate-officer in whose office a certificate is filed is satisfied that the certificate-debtor is likely to conceal, remove or dispose of the whole or any part of such of his movable property as is liable to attachment under this Act, and that the realization of the amount of the certificate would in consequence be delayed or obstructed, he may

(Secs. 15-18.)

at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such movable property.

15. Subject to such conditions and limitations as may be prescribed, a Certificate-officer may order execution of a certificate— Modes of execution.

- (a) by attachment, and sale, if necessary, of any property, or, in the case of immovable property, by sale without previous attachment, or
- (b) by, arresting the certificate-debtor and detaining him in the civil prison, or
- (c) by both of the methods mentioned in clauses (a) and (b).

*Explanation to clause (c).—*The Certificate-officer may, in his discretion, refuse execution at the same time against the person and property of the certificate-debtor.

16. Where a revenue-paying estate or any share therein is liable to sale in execution of a certificate, such sale may be held either— Certain sales, by whom to be held.

- (a) by the Certificate-officer exercising jurisdiction in the district to the revenue-roll of which the estate or share appertains, or
- (b) by the Certificate-officer exercising jurisdiction in the district in which such estate or share is situated :

Provided that in the latter case previous notice of the sale shall be sent to the Collector of the district on the revenue-roll of which the estate or share is borne.

17. There shall be recoverable, in the proceedings in execution of every certificate filed under this Act,— Interest, costs and charges recoverable.

- (a) interest upon the public demand to which the certificate relates, at the rate of six and a quarter *per centum per annum* from the date of the signing of the certificate up to the date of realisation,
- (b) such costs as are directed to be paid under section 54, and
- (c) all charges incurred in respect of—
 - (i) the service of notice under section 7 and of warrants and other processes, and
 - (ii) all other proceedings taken for realising the demand.

Attachment.

18. (1) The following property is liable to attachment and sale in execution of a certificate under this Act, namely, lands, houses or other Property liable to

(Sec. 18.)

attachment
and sale in
execution of
a certificate.

buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the certificate-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the certificate-debtor or by any other person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:—

- (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the certificate-debtor, his wife and children, and such personal ornaments, as, in accordance with religious usage, cannot be parted with by any woman;
- (b) tools of artizans, and, where the certificate-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Certificate-officer, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;
- (c) houses and other bulidings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;
- (d) books of account;
- (e) a mere right to sue for damages;
- (f) any right of personal service;
- (g) stipends and gratuities allowed to pensioners of the Government, or payable out of any service family pension fund notified in the *Gazette of India* by the Governor General in Council in this behalf, and political pensions;
- (h) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty;
- (i) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (h), while on duty, to the extent of—

(Sec. 18.)

- (i) the whole of the salary where the salary does not exceed twenty rupees monthly;
- (ii) twenty rupees monthly, where the salary exceeds twenty rupees and does not exceed forty rupees monthly; and
- (iii) one moiety of the salary in any other case.
- (j) the pay and allowances of persons to whom the Indian Articles of War apply;
- (k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1897, for the time being applies in so far as they are declared by the said Act not to be liable to attachment;
- (l) the wages of labourers and domestic servants whether payable in money or in kind;
- (m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (n) a right to future maintenance;
- (o) any allowance declared by any law passed under the Indian Councils Acts, 1861 and 1892, to be exempt from liability to attachment or sale in execution of a decree;
- (p) where the certificate-debtor is a person liable for the payment of land revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue; and
- (q) any immovable property which, under the Tenancy law for the time being in force in the local area in which the certificate is to be executed, would not have been liable to sale had the certificate been a decree of a court of ordinary jurisdiction.

Explanation.—The particulars mentioned in clauses (g), (h), (i), (j), (l) and (o) are exempt from attachment or sale whether before or after they are actually payable.

(2) Nothing in this section shall be deemed—

- (a) to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of certificates for rent of any such house, building, site or land; or,
- (b) to effect the provisions of the Army Act or of any similar law for the time being in force.

IX of 1897.

24 & 25 Vict.
c. 67 & 55 &
56 Vict. c. 14.

(Secs. 19-23.)

Partial
exemption
of agricul-
tural produce.

19. The Local Government may, by general or special order published in the local official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce as may appear to the Local Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the certificate-debtor and his family shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a certificate.

Payment of
moneys
contrary
to attach-
ment to be
void.

20. Where an attachment has been made in execution of a certificate, any payment to the certificate-debtor of any debt, dividend or other moneys, contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Investigation of claims and objections.

Investigation
by Certificate-
officer.

21. (1) Where any claim is preferred to, or any objection is made to, the attachment or sale of any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Certificate-officer shall proceed to investigate the claim or objection :

Provided that no such investigation shall be made where the Certificate-officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Certificate-officer ordering the sale may postpone it pending the investigation of the claim or objection.

Evidence to
be adduced.

22. The claimant or objector must adduce evidence to show that—

(a) (in the case of immovable property) at the date of the service of the notice under section 7, or

(b) (in the case of movable property) at the date of the attachment, he had some interest in, or was possessed of, the property attached.

Release of
property
from attach-
ment or sale.

23. Where, upon the said investigation, the Certificate-officer is satisfied that for the reason stated in the claim or objection, such property was not,—

(a) (in the case of immovable property) at the date of the service of the notice under section 7, or

(b) (in the case of movable property) at the date of the attachment, in the possession of the certificate-debtor or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the certificate-debtor at the said date

(Secs. 24-26.)

it was so in his possession, not on his own account or as his own property but on account of or in trust for some other person, or partly on his own account and partly on account of some other person.

The Certificate-officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

24. Where the Certificate-officer is satisfied that the property was, at the said date, in the possession of the certificate-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Certificate-officer shall disallow the claim. Disallowance of claim to property attached.

25. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a Civil Court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order shall be conclusive. Savings of suits to establish right to attached property.

Sale.

26. (1) Where property is sold in execution of a certificate there shall vest in the purchaser merely the right, title and interest of the certificate-debtor at the time of the sale, even though the property itself be specified. Purchaser's title.

(2) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

(3) Notwithstanding anything contained in sub-section (1), in areas in which Chapter XIV of the Bengal Tenancy Act, 1885,^[1] or Chapter XVI of the Orissa Tenancy Act, 1913,^[2] is in force, where a tenure or holding is sold in execution of a certificate for arrears of rent due in respect thereof, the tenure or holding shall, subject to the provisions of section 22 and section 26 of the said Acts, respectively, pass to the purchaser, subject to the interests defined in the said Chapters as "protected interests," but with power to annul the interests defined in the said Chapters as "incumbrances".

Provided as follows:

- (i) a registered and notified incumbrance within the meaning of the said Chapters shall not be so annulled except in the case mentioned therein; and

^[1] Printed in Vol. I of this Code.

^[2] Printed ante, p. 486.

(Secs. 27-28.)

(ii) the power to annul shall be exerciseable only in the manner directed under those Chapters.

(4) In areas in which the Chota Nagpur Tenancy Act, 1908,^[1] is in force, where a tenure or holding is sold in execution of a certificate for arrears of rent due in respect thereof, the provisions of sub-section (1) of section 208 of the said Act shall apply.

(5) Where the certificate-holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of sub-sections (3) and (4) shall not apply.

Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.

27. (1) No suit shall be maintained, against any person claiming title under a purchase certified by the Certificate-officer in such manner as may be prescribed, on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims. (2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

Setting aside sale.

28. (1) Where immovable property has been sold in execution of a certificate, the certificate-debtor, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Certificate-officer to set aside the sale, on his depositing—

- (a) for payment to the certificate-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of six and a quarter *per centum per annum*, calculated from the date of the sale to the date when the deposit is made;
- (b) for payment to the purchaser, as penalty, a sum equal to ten *per cent.* of the purchase-money, but not less than one rupee; and
- (c) for payment to the Collector (where the certificate is for a public demand payable to the Collector), such outstanding charges due to the Government under any law for the time being in force as the Collector certifies to be payable by the certificate-debtor.

Application to set aside sale of immovable property on deposit.

(Secs. 29-31.)

(2) Where a person makes an application under section 29 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this section.

29. (1) Where immovable property has been sold in execution of a certificate, the certificate-holder, the certificate-debtor, or any person whose interests are affected by the sale, may, at any time within sixty days from the date of the sale, apply to the Certificate-officer to set aside the sale on the ground that notice was not served under section 7 or on the ground of a material irregularity in the certificate proceedings or in publishing or conducting the sale: Application to set aside sale of immovable property on ground of non-service of notice or irregularity.

Provided as follows:—

(a) no sale shall be set aside on the ground of any such material irregularity unless the Certificate-officer is satisfied that the applicant has sustained substantial injury thereby; and

(b) before the Certificate-officer passes an order setting aside a sale under this section he shall require the certificate-debtor to pay the amount actually found due from him.

(2) Notwithstanding anything contained in sub-section (1) the Certificate-officer may entertain an application made after the expiry of sixty days from the date of the sale if he is satisfied that there are reasonable grounds for so doing.

30. The purchaser at any sale of immovable property in execution of a certificate may, at any time within sixty days from the date of the sale, apply to the Certificate-officer to set aside the sale on the ground that the certificate-debtor had no saleable interest in the property sold, or that the property did not exist at the time of the sale, or that the purchaser has suffered substantial injury owing to any misdescription in the sale proclamation of the interest of the certificate-debtor in the property sold. Application to set aside sale on ground that certificate-debtor had no saleable interest or that property did not exist.

31. (1) Where no application is made under section 28, section 29 or section 30, or where such an application is made and disallowed, the Certificate-officer shall make an order confirming the sale, and thereupon the sale shall, subject to the provisions of sub-section (2) of section 29, become absolute. Sale when to become absolute, the or be set aside.

(2) Where such an application is made and allowed, and where, in the case of an application under section 28, the deposit required by that section is made within thirty days from the date of the sale, the Certificate-officer shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(Secs. 32-34.)

Disposal of Proceeds of Execution.

Disposal of
proceeds of
execution.

32. (1) Whenever assets are realised, by sale or otherwise, in execution of a certificate, they shall be disposed of in the following manner:—

- (a) there shall first be paid to the certificate-holder, the costs incurred by him;
- (b) there shall, in the next place, be paid to the certificate-holder the amount due to him under the certificate in execution of which the assets were realised;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the certificate-holder therefrom any other amount recoverable under the procedure provided by this Act which may be due to him upon the date upon which the assets were realised; and
- (d) the balance (if any) remaining after the payment of the amount (if any) referred to in clause (c) shall be paid to the certificate-debtor.

(2) If the certificate-debtor disputes any claim made by the certificate-holder to receive any amount referred to in clause (c), the Certificate-officer shall determine the dispute.

Obstruction of Possession after Sale.

Application
by purchaser
resisted or
obstructed in
obtaining
possession of
immovable
property.

33. (1) If the purchaser of any immovable property sold in execution of a certificate is resisted or obstructed by any person in obtaining possession of the property, he may apply to the Certificate-officer.

(2) The Certificate-officer shall fix a day for investigating the matter, and shall summon the party against whom the application is made to appear and answer the same.

Procedure
on such
application.

34. (1) If the Certificate-officer is satisfied that the resistance or obstruction was occasioned without any just cause by the certificate-debtor or by some person on his behalf, he shall direct that the applicant be put into possession of the property; and, if the applicant is still resisted or obstructed in obtaining possession, the Certificate-officer may also, at the instance of the applicant, order the certificate-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days.

(2) If the Certificate-officer is satisfied that the resistance or obstruction was occasioned by any person (other than the certificate-debtor) claim-

(Secs. 35-39.)

ing in good faith to be in possession of the property on his own account or on account of some person other than the certificate-debtor, the Certificate-officer shall make an order dismissing the application.

35. (1) Where any person, other than the certificate-debtor is dispossessed by the purchaser of immovable property which has been sold in execution of a certificate, he may make application to the Certificate-officer complaining of such dispossession; Dispossession by purchaser.

(2) the Certificate-officer shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

36. Where the Certificate-officer is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the certificate-debtor, he shall direct that the applicant be put into possession of the property. Bona fide claimant to be restored to possession.

37. Any person, not being a certificate-debtor, against whom an order is made under section 36 or section 34, sub-section (2), may institute a suit in a Civil Court to establish the right which he claims to the present possession of the property; but subject to the result of such suit (if any) the order shall be conclusive. Orders conclusive subject to suit in a Civil Court.

Arrest, Detention and Release.

38. A certificate-debtor may be arrested in execution of a certificate at any hour and on any day, except as provided in section 56, and, when so arrested, shall, as soon as practicable, be brought before the Certificate-officer; and his detention may be in the civil prison of the district in which the Certificate-officer ordering the detention exercises jurisdiction, or, where such civil prison does not afford suitable accommodation, in any other place which the Local Government may appoint for the detention of persons ordered by the Civil Courts of such district to be detained: Power of arrest and detention.

Provided that, if the amount entered in the warrant of arrest as due under the certificate, and the costs of the arrest, have been paid either to the Certificate-officer or to the officer arresting the certificate-debtor, such officer shall at once release him.

39. (1) The Collector may order the release of a certificate-debtor who has been arrested in execution of a certificate, upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Certificate-officer and that he has not committed any act of bad faith. Release from arrest and re-arrest.

(2) If the Certificate-officer has ground for believing the disclosure made by a certificate-debtor under sub-section (1) to have been untrue,

(Secs. 40-41.)

he may order the re-arrest of the certificate-debtor in execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by section 40, sub-section (1):

Provided that if such order is passed by a Certificate-officer other than the Collector, the previous sanction of the Collector shall be necessary.

Detention
in and release
from prison.

40. (1) Every person detained in the civil prison in execution of a certificate may be so detained,—

- (a) where the certificate is for a demand of an amount exceeding fifty rupees—for a period of six months, and
- (b) in any other case—for a period of six weeks:

Provided that he shall be released from such detention—

- (i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or
- (ii) on the certificate being otherwise fully satisfied, or cancelled, or
- (iii) on the request of the person (if any) on whose requisition the certificate was filed or of the Collector, or
- (iv) on the omission by the person (if any) on whose requisition the certificate was filed to pay the subsistence allowance fixed by the Certificate-officer:

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii) without the order of the Certificate-officer.

(2) A certificate-debtor released from detention under this section shall not, merely by reason of his release, be discharged from his debt; but he shall not be liable to be re-arrested under the certificate in execution of which he was detained in the civil prison.

Release on
ground of
illness.

41. (1) At any time after a warrant for the arrest of a certificate-debtor has been issued, the Certificate-officer may cancel it on the ground of his serious illness.

(2) Where a certificate-debtor has been arrested, the Certificate-officer may release him if, in the opinion of the Certificate-officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a certificate-debtor has been committed to the civil prison, he may be released therefrom—

- (a) by the Collector, on the ground of the existence of any infectious or contagious disease; or

(Secs. 42-43.)

(b) by the Certificate-officer, or the Collector, on the ground of his suffering from any serious illness.

(4) A certificate-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that authorized by section 40, sub-section (1).

42. Notwithstanding anything in this Act, the Certificate-officer shall not order the arrest or detention in the civil prison of—

(a) a woman, or

(b) any person who, in his opinion, is a minor or of unsound mind.

Prohibition of arrest or detention of women and persons under disability.

PART IV.

REFERENCE TO CIVIL COURT.

43. The certificate-debtor may, at any time within six months—

(1) from the service upon him of the notice required by section 7, or

(2) if he files, in accordance with section 9, a petition denying liability—from the date of the determination of the petition, or

(3) if he appeals, in accordance with section 60, from an order passed under section 10—from the date of the decision of such appeal,

Suit in Civil Court to have certificate cancelled or modified.

bring a suit in a Civil Court to have the certificate cancelled or modified, and for any other consequential relief to which he may be entitled:

Provided that no such suit shall be entertained—

(a) in any case, if the certificate-debtor has omitted to file, in accordance with section 9, a petition denying liability, or to state in his petition denying liability the ground upon which he claims to have the certificate cancelled or modified, and cannot satisfy the Court that there was good reason for the omission, or

(b) in the case of a certificate for a demand mentioned in Article 1 or Article 2 of Schedule I, if the certificate-debtor has not paid the amount due under the certificate to the Certificate-officer—

(i) within thirty days from the service of the notice required by section 7, or

(Secs. 44-45.)

- (ii) if he has filed, in accordance with section 9, a denying liability—then within thirty days from the date of the determination of the petition, or
- (iii) if he has appealed in accordance with section 60—then within thirty days from the decision of the appeal:

Provided also that no sale in execution of a certificate shall be set aside in such a suit unless the purchaser has been made a party to the suit and until a direction is made for the refund of the amount of the purchase-money, with such interest (if any) as the Court may allow.

Grounds for
cancellation
or modifica-
tion of
certificate by
Civil Court.

44. (1) No certificate duly filed under this Act shall be cancelled by a Civil Court, except on one of the following grounds, namely:—

- (a) that the amount stated in the certificate was actually paid or discharged before the signing of the certificate;
- (b) that no part of the amount stated in the certificate was due by the certificate-debtor to the certificate-holder; or
- (c) that, in the case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged, by a Collector or a public officer under any law or any rule having the force of law, the proceedings of such Collector or public officer were not in substantial conformity with the provisions of such law or rule, and that in consequence the certificate-debtor suffered substantial injury from some error, defect or irregularity in such proceedings.

(2) No certificate duly filed under this Act shall be modified by a Civil Court, except on one of the following grounds namely:—

- (i) that a portion of the alleged debt was not due; or
- (ii) that the certificate-debtor has not received credit for any portion which he has paid.

Suit to
recover
possession of,
or to set aside
sale of,
immovable
property
where notice
of certificate
not served.

45. Notwithstanding anything hereinbefore contained, a sale of immovable property in execution of a certificate shall not be held to be void on the ground that the notice required by section 7 has not been served; but a suit may be brought in a Civil Court to recover possession of such property or to set aside such sale on the ground that such notice has not been served:

Provided that no such suit shall be entertained—

- (a) if instituted more than one year from the date on which possession of the property was delivered to the purchaser, or

(Secs. 46-48.)

- (b) if the certificate-debtor has made appearance in the certificate proceeding, or has applied to the Certificate-officer under section 28 to set aside the sale.

46. Except as otherwise expressly provided in this Act, every question arising between the certificate-holder and the certificate-debtor, or their representatives, relating to the making, execution, discharge or satisfaction of a certificate duly filed under this Act, or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Certificate-officer before whom such question arises, or of such other Certificate-officer as he may determine :

General bar to jurisdiction of Civil Courts, save where fraud alleged.

Provided that a suit may be brought in a Civil Court in respect of any such question upon the ground of fraud.

PART V.

RULES.

47. The rules in Schedule II shall have effect as if enacted in the body of this Act, until altered or annulled in accordance with the provisions of this Part.

Effect of rules in Schedule II.

48. (1) The Board of Revenue may, after previous publication and with the previous sanction of the Local Government, make rules^[1] regulating the procedure to be followed by persons making requisitions under section 5 and by Collectors and Certificate-officers acting under this Act; and may, by such rules, alter, add to or annul any of the rules in Schedule II.

Power of Board of Revenue to make rules as to procedure.

(2) Such rules shall not be inconsistent with the provisions in the body of this Act, but, subject thereto, may, in particular, and without prejudice to the generality of the power conferred by sub-section (1), provide for all or any of the following matters, namely:—

- (a) the signature and verification of requisitions made under section 5;
- (b) the Certificate-officers to whom such requisitions should be addressed;
- (c) the cases in which such requisitions shall not be chargeable with a fee;

[¹] For rules made under this section, see the Bihar and Orissa Local Statutory Rules and Orders, 1918, Vol. I, Pt. VII.

(Secs. 49-51.)

- (d) the service of notices issued under section 7, the service of other notices or processes issued under this Act and the manner in which service may be proved;
- (e) the signing and verification of petitions, under section 9, denying liability;
- (f) the transfer of such petitions to other officers for disposal;
- (g) the scale of charges to be recovered under section 17, clause (c);
- (h) the maintenance and custody, while under attachment, of live-stock and other movable property, the fees to be charged for such maintenance and custody, the sale of such live-stock and property, and the disposal of the proceeds of such sale;
- (i) the registers, books and accounts to be kept by Certificate-officers, and the inspection thereof by the public;
- (j) the fee to be charged for the inspection of the register of certificates maintained under rule 55 in Schedule II;
- (k) the recovery of expenditure on the certificate establishment by the levy of costs under section 17, clause (b), and section 54;
- (l) the recovery of poundage fees;
- (m) the forms to be used under this Act.

Publication and effect of rules made under section 48.

49. (1) Rules made and sanctioned under section 48 shall be published in the *Bihar and Orissa Gazette*, and shall, from the date of publication or from such other date as may be specified, have the same force and effect as if they had been contained in Schedule II.

(2) All references in this Act to the said Schedule II shall be construed as referring to that Schedule as for the time being amended by such rules.

PART VI.

SUPPLEMENTAL PROVISIONS.

Persons under disability.

50. Where the Certificate-officer is satisfied that the certificate-debtor is a minor or of unsound mind, he shall, in any proceeding under this Act, permit him to be represented by any suitable person.

Continuance of certificates.

51. No certificate shall cease to be in force by reason of—

- (a) the property to which the demand relates ceasing to be under the charge or management of the Court of Wards or the Revenue-authorities; or
- (b) the death of the certificate-holder.

(Secs. 52-56.)

52. (1) Where a certificate-debtor dies before the certificate has been fully satisfied, the Certificate-officer may, after serving upon the legal representative of the deceased a notice in the prescribed form, proceed to execute the certificate against such legal representative; and the provisions of this Act shall apply as if such legal representative were the certificate-debtor and as if such notice were a notice under section 7:

Procedure on
death of cer-
tificate-debt-
or.

Provided that where the certificate is executed against such legal representative, he shall be liable only to the extent of the property of the deceased, which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Certificate-officer executing the certificate may, of his own motion or on the application of the certificate-holder, compel such legal representative to produce such accounts as the Certificate-officer thinks fit.

(2) For the purposes of this section, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a certificate has been filed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

53. (1) The Certificate-officer shall cancel any certificate at the request of the certificate-holder.

Cancellation
of certificates.

(2) The Certificate-officer may cancel any certificate filed under section 6 if the certificate-holder is not reasonably diligent.

54. Subject to such limitation as may be prescribed, the award of any costs of, and incidental to, any proceeding under this Act shall be in the discretion of the officer presiding, and he shall have full power to direct by whom and to what extent such costs shall be paid.

55. If the Certificate-officer is satisfied that any requisition under section 5 was made without reasonable cause, he may award to the certificate-debtor such compensation as the Certificate-officer thinks fit;

Compensa-
tion.

and the amount so awarded shall be recoverable from the certificate-holder under the procedure provided by this Act for recovery of costs.

56. (1) No person executing any warrant of arrest issued under this Act, or any process issued under this Act directing or authorizing the attachment of movable property, shall enter any dwelling-house after sunset or before sunrise.

Entry into
dwelling-
house.

(2) No outer door of a dwelling-house shall be broken open unless the dwelling-house or a portion thereof is in the occupancy of the certificate-debtor and he or any other occupant of the house refuses or in any way prevents access thereto; but, when the person executing any such warrant

(Secs. 57-60.)

or other process has duly gained access to any dwelling-house, he may break open the door of any room and enter, if he has reason to believe that entering into the room is necessary in order to enable him to execute the process.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw; and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of executing the process; and if the process be for the attachment of property, he may at the same time use every precaution, consistent with this section, to prevent its clandestine removal.

Application
of Act XVIII
of 1850.

57. Every Collector, Certificate-officer, Assistant Collector or Deputy Collector acting under this Act, and every Government officer making a requisition under section 5, shall, in the discharge of his functions under this Act, be deemed to be acting judicially within the meaning of the Judicial Officers' Protection Act, 1850. [1]

XVIII of
1850.

Officers to
have powers
of Civil Court
for certain
purposes.

58. Every Collector, Certificate-officer, Assistant Collector or Deputy Collector acting under this Act, shall have the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the production of documents.

Control over
officers.

59. All Certificate-officers (not being Collectors), Assistant Collectors and Deputy Collectors shall, in the performance of their duties under this Act, be subject to the general supervision and control of the Collector.

Appeal.

60. (1) An appeal from any original order made under this Act shall lie—

(a) if the order was made by an Assistant Collector or a Deputy Collector, or by a Certificate-officer not being the Collector, —to the Collector; or,

(b) if the order was made by the Collector,—to the Commissioner:

Provided that no appeal shall lie from any order setting aside a sale on an application made under section 28.

(2) Every such appeal must be presented, in case (a), within fifteen days, or, in case (b), within thirty days, from the date of the order.

(3) The Collector may, by order, with the previous sanction of the Commissioner, authorize—

(i) any Sub-Divisional Officer; or,

(Secs. 61-67.)

(ii) any officer appointed under clause (3) of section 3 to perform the functions of a Certificate-officer,

to exercise the appellate powers of the Collector under sub-section (1).

(4) When any officer has been so authorized, the Collector may transfer to him for hearing any appeal referred to in clause (a) of sub-section (1), unless the order appealed against was made by such officer.

(5) Pending the decision of any appeal, execution may be stayed if the appellate authority so directs, but not otherwise.

61. No appeal shall lie from any order of a Collector, or an officer authorized under section 60, sub-section (3), when passed on appeal. Bar to second appeals.

62. The Collector may revise any order passed by a Certificate-officer, Assistant Collector, or Deputy Collector under this Act; Revision.

the Commissioner may revise any order passed by a Collector under this Act;

and the Board of Revenue may revise any order passed by a Commissioner under this Act.

63. Any order passed under this Act may, after notice to all persons interested, be reviewed by the officer who made the order, or by his successor in office, on account of mistake or error either in the making of the certificate or in the course of any proceeding under this Act. Review.

64. The powers given by this Act shall be deemed to be in addition to, and not in derogation from, any powers conferred by any other Act now in force for the recovery of any due, debt or demand to which the provisions of this Act are applicable; and, except where expressly so provided, no legal remedy shall be affected by this Act. Saving of other Acts.

IX of 1908. 65. (1) Sections 6 to 9 of the Indian Limitation Act, 1908, [1] shall not apply to suits, appeals or applications under this Act. Application of the Indian Limitation Act, 1908.

IX of 1908. (2) Except as declared in sub-section (1), or as otherwise provided in this Act, the provisions of the Indian Limitation Act, 1908, [1] shall apply to all proceedings under this Act as if a certificate filed hereunder were a decree of a Civil Court.

IX of 1908. 66. A Certificate-officer shall be deemed to be a Court, and any proceeding before him shall be deemed to be a civil proceeding within the meaning of section 14 of the Indian Limitation Act, 1908. [1] Certificate-officer deemed to be a Court.

67. Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein, from being taken in execution of a Penalties.

(Secs. 68-69. Schedule I.)

certificate, shall be deemed to have committed an offence punishable under section 206 of the Indian Penal Code.^[1]

XLV of 1860,

signature of
documents by
ministerial
officers.

68. (1) Any Certificate-officer may, by written order, authorize any ministerial officer to sign, on behalf of the Certificate-officer, any copy, issued by the Certificate-officer under this Act, of any document referred to therein.

(2) The Local Government may, by notification in the *Bihar and Orissa Gazette*, empower Certificate-officers to authorize ministerial officers, by written order, to sign on behalf of Certificate-officers any classes of original notices, summonses or proclamations issued by Certificate-officers under this Act which are specified in such notification.

Amendments
of the Bengal
Tenancy Act,
1885; the
Orissa
Tenancy Act,
1913; and the
Chota
Nagpur
Tenancy Act,
1908.

69. Chapter XIII A and sections 158B, 167, 171 and 172 of the Bengal VIII of 1885
Tenancy Act, 1885,^[2] Chapter XV and sections 212, 221, 225 and 226 of B. & O. Act
the Orissa Tenancy Act, 1913,^[3] and sections 244 and 248 of the Chota II of 1913.
Nagpur Tenancy Act, 1908,^[4] are amended in the manner and to the Ben. Act VI
extent shown in Schedule III. of 1908.

SCHEDULE I.

PUBLIC DEMANDS.

[See sections 3 (6) and 43, proviso (b).]

1. Any arrear of revenue which remains due in the following circumstances, namely:

when, under the provisions of the Bengal Land-revenue Sales Act, XI of 1859.
1859,^[5] or the Bengal Land-revenue Sales Act, 1868,^[6] or any other law Ben. Act VI
for the time being in force, an estate or tenure, or any share of an estate of 1868.
or tenure, has been sold for the recovery of arrears of revenue due there-
upon, and, after deducting the expenses of such sale, the balance of the
sale-proceeds remaining is insufficient to liquidate the arrears of revenue
in discharge of which such sale-proceeds may, under the said provisions,
be applied.

2. Any arrear of revenue which is due from a farmer on account of an estate held by him in farm, and is not paid on the latest day of payment fixed under section 3 of the said Bengal Land-revenue Sales Act, 1859.^[5] XI of 1859.

^[1] Printed in the General Acts, 1834-67, Ed. 1909, p. 248.

^[2] Printed in Vol. I of this Code.

^[3] Printed *ante*, p. 484.

^[4] Printed *ante*, p. 247.

^[5] Printed in Vol. I of this Code.

^[6] Printed in Vol. II of this Code.

(Schedule I.)

3. Any money which is declared by any law for the time being in force to be recoverable or realizable as an arrear of revenue or land-revenue, or by the process authorized for the recovery of arrears of revenue or of the public revenue or of Government revenue.

4. Any money which is declared by any enactment for the time being in force—

- (i) to be a demand or a public demand; or,
- (ii) to be recoverable as arrears of a demand or public demand, or as a demand or public demand; or,
- (iii) to be recoverable under the Bengal Land-revenue Sales Act, 1868.[¹]

Ben. Act VI
of 1868.

5. Any money due from the sureties of a farmer in respect of the revenue of the estate farmed by him.

6. Any money awarded as fees or costs by a Revenue-authority under any law or any rule having the force of law.

7. Any demand payable to the Collector by a person holding any interest in land, pasturage, forest-rights, fisheries or the like, whether such interest is or is not transferable, when such demand is a condition of the use and enjoyment of such land, pasturage, forest-rights, fisheries or other things.

8. In the case of property which, under the provisions of any law for the time being in force, is under the charge of, or is managed by, the Court of Wards or the Revenue-authorities on behalf of a private individual—any arrear of rent, or of any demand which is recoverable as rent, whether such arrear became due before or after the management devolved upon such Court or such authorities:

Provided that this clause shall not apply to any arrears of rent at an enhanced rate unless such enhanced rate has been agreed to by the person liable to pay the same or has been confirmed by a competent Court.

9. Any money payable to a Government Officer or any local authority, in respect of which the person liable to pay the same has agreed, by a written instrument duly registered, that it shall be recoverable as a public demand.

Ben. Act V
of 1897.

10. Any stamp duty payable by a proprietor in respect of a paper of partition prepared under the Estates Partition Act, 1897.[²]

1864.

11. In the case of a person to whom the collection of tolls has been farmed under section 8 of the Canals Act, 1864,[¹] or of the sureties of such person—any money due in respect of such farm.

[¹] Printed in Vol. II of this Code.

[²] Printed ante, p. 89.

(Schedule II.)

Service by
post.

9. Notwithstanding anything hereinbefore contained, the notice may, if the Certificate-officer so directs, be served by post.

PETITIONS UNDER SECTION 9, DENYING LIABILITY.

Signature on
verification of
petition deny-
ing liability.

10. (1) Every petition filed under section 9, denying liability, shall be signed and verified at the foot by the certificate-debtor or by some other person on his behalf who is proved to the satisfaction of the Certificate-officer to be acquainted with the facts of the case.

(2) The verification shall be signed by the person making it, and shall state the date on which it is signed.

Transfer of
such peti-
tions.

11. (1) The Certificate-officer may, subject to any general or special order of the Collector, transfer to any Assistant Collector or Deputy Collector subordinate to the Collector any petition filed under section 9; and such Assistant Collector or Deputy Collector shall hear and determine such petition accordingly:

Provided that the Collector may re-transfer any petition so transferred, and order that it be heard and determined by the Certificate-officer.

(2) The provisions of section 10 shall be applicable to any Assistant Collector or Deputy Collector to whom any such petition has been transferred under sub-rule (1).

EXECUTION OF CERTIFICATES.

Execution in
another
district.

12. Where a copy of a certificate is sent for execution to the Collector of another district under section 13, sub-section (1), the certificate may be executed by him or may be transferred by him to any Certificate-officer in his district.

Attachment.

Attachment
of movable
property
(other than
agricultural
produce) in
possession
of certificate-
debtor.

13. Where the property to be attached is movable property (other than agricultural produce) in the possession of the certificate-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided, that, when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

(Schedule II.)

14. Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment—
Attachment
of agricul-
tural
produce.

(a) where such produce is a growing crop—on the land on which such crop has grown, or

(b) where such produce has been cut or gathered—on the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the certificate-debtor ordinarily resides, or, with the leave of the Certificate-officer, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last-resided or carried on business or personally worked for gain;

and the produce shall thereupon be deemed to have passed into the possession of the Certificate-officer.

15. (1) Where agricultural produce is attached, the Certificate-officer shall make such arrangements for the custody thereof as he may deem sufficient, and, when the produce is a growing crop, shall have regard to the time at which it is likely to be fit to be cut or gathered.
Provisions as
to agricul-
tural produce
under attach-
ment.

(2) Subject to such conditions as may be imposed by the Certificate-officer at his behalf, either in the order of attachment or in any subsequent order, the certificate-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and, if the certificate-debtor fails to do all or any of such acts, the certificate-holder may, with the permission of the Certificate-officer and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the certificate-holder shall be recoverable from the certificate-debtor as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment, merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Certificate-officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(Schedule II.)

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Attachment
of debt, share,
and other
movable
property not
in posses-
sion of certi-
ficate-debtor.

16. (1) In the case of—

- (a) a debt not secured by a negotiable instrument,
- (b) a share in the capital of a Corporation, or
- (c) other movable property not in the possession of the certificate debtor, except property deposited in, or in the custody of, any Court,

the attachment shall be made by a written order prohibiting—

- (i) in the case of the debt—the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Certificate-officer;
- (ii) in the case of the share—the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
- (iii) in the case of the other movable property (except as aforesaid)—the person in possession of the same from giving it over to the certificate-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the Certificate-officer and another copy shall be sent, in the case of the debt to the debtor, in the case of the share, to the proper officer of the Corporation, and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt to the Certificate-officer, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

Attachment
of share in
movables.

17. Where the property to be attached consists of the share or interest of the certificate-debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the Certificate-debtor prohibiting him from transferring the share or interest or changing it in any way.

Attachment
of salary or
allowances of
public
officer or
servant
of Railway

18. (1) Where the property to be attached is the salary or allowances of a public officer or of a servant of a Railway Company or Local Authority, the Certificate-officer, whether the certificate-debtor or the disbursing officer is or is not within the local limits of the Certificate-officer's jurisdiction, may order that the amount shall be withheld from such salary or

(Schedule II.)

allowances, either in one payment or by monthly instalments as the Certificate-officer may direct; and, upon notice of the order to such officer as the Local Government may, by notification in the *Bihar and Orissa Gazette*, appoint, in this behalf, the officer or other person whose duty it is to disburse such salary or allowances shall withhold and remit to the Certificate-officer the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Certificate-officer or to a Civil Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the Local Government in this behalf shall forthwith return the subsequent order to the Certificate-officer, or issuing it, with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall without further notice or other process, bind the Government or the Railway Company or Local Authority, as the case may be; and the Government or the Railway Company or Local Authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

19. Where the property is a negotiable instrument not deposited in a Court nor in the custody of a public officer, the attachment shall be made by actual seizure and the instrument shall be brought before the Certificate-officer and held subject to his orders.

20. Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Certificate-officer by whom the notice is issued:

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the certificate-holder and any other person, not being the certificate-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

21. Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge the attachment shall be made by the issue to the Civil Court of a notice requesting the Civil Court to stay the execution of the decree unless and until—

(i) the Certificate-officer, cancels the notice, or

(Schedule II.)

(ii) the certificate-holder or the certificate-debtor applies to the Court receiving such notice to execute the decree.

(2) Where a Civil Court receives an application under clause (iii) of sub-section (1) it shall, on the application of the certificate-holder or the certificate-debtor, and subject to the provisions of the Code of Civil Procedure, 1908, proceed to execute the attached decree and apply the net V of 1908. proceeds in satisfaction of the certificate.

(3) The certificate-holder shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

Attachment
of immovable
property.

22. Where the property is immovable, no attachment need be made before sale.

Removal of
attachment
on satisfac-
tion or can-
cellation of
certificate.

23. Where—

(a) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to a sale, are paid to the Certificate-officer, or

(b) the certificate is cancelled.

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the certificate-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by rule 26, sub-rule (1).

Sale generally.

Power to
order sale of
attached pro-
perty.

24. Any Certificate-officer executing a certificate may order that any property liable to sale, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

Proclamation
of sale by
public auc-
tion.

25. (1) Where any immovable property, or any movable property exceeding twenty rupees in value, is ordered to be sold by public auction, the Certificate-officer shall cause a proclamation of the intended sale to be made in the language of the Courts of the district.

(2) Such proclamation shall be drawn up after notice to the certificate-debtor and shall state the time and place of sale, and shall specify, as fairly and accurately as possible,—

(a) the property to be sold;

(b) (where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government) the revenue assessed upon the estate or part of the estate;

(c) the amount for the recovery of which the sale is ordered; and

(Schedule II.)

(d) every other thing which the Certificate-officer considers it material for a purchaser to know in order to judge of the nature and value of the property.

VIII of 1885. area in which Chapter XIV of the Bengal Tenancy Act, 1885;[¹] or
II of 1913. Chapter XVI of the Orissa Tenancy Act, 1913,[²] is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the said proclamation shall also state that the tenure or holding will first be put up to auction subject to registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount specified in the certificate, and costs, and that otherwise it will, if the certificate-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances.

VIII of 1885. (4) Where an occupancy holding, situated in an area in which Chapter
II of 1913. XIV of the Bengal Tenancy Act, 1885,[¹] or Chapter XVI of the Orissa Tenancy Act, 1913,[²] is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the said proclamation shall also state that the holding will be sold with power to annul all incumbrances.

(5) Where the certificate-holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of sub-rules (3) and (4) shall not apply.

(6) For the purpose of ascertaining the matters to be specified in the proclamation, the Certificate-officer may summon any person whom he thinks necessary to summon, and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

26. (1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the office of the Certificate-officer. A copy of the proclamation shall also be sent by registered post to the certificate-debtor. Mode of making proclamation.

(2) Where the Certificate-officer so directs, such proclamation shall also be published in the *Bihar and Orissa Gazette* or in a local newspaper, or in both; and the cost of such publication shall be deemed to be costs of the sale.

[¹] Printed in Vol. I of this Code.

[²] Printed *ante*, p. 486.

(Schedule II.)

(3) If a tenure, a raiyati holding at fixed rates or an occupancy holding situated in an area in which [¹]Chapter XIV of the Bengal Tenancy Act, 1885, or [²]Chapter XVI of the Orissa Tenancy Act, 1913, is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the proclamation shall also be published in the Malkachari or rent office of the estate and at the local thana.

(4) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Certificate-officer, otherwise be given.

Time of sale.

27. Save in the case of property of the kind described in the proviso to rule 13, no sale hereunder shall, without the consent in writing of the certificate-debtor, take place until after the expiration of at least thirty days in the case of immovable property, or of at least fifteen days in the case of movable property exceeding twenty rupees in value, calculated from the date on which a copy of a sale proclamation has been affixed in a conspicuous part of the office of the Certificate-officer:

Provided that if a tenure, a raiyati holding at fixed rates or an occupancy holding situated in an area in which [¹]Chapter XIV of the Bengal Tenancy Act, 1885, or [²]Chapter XVI of the Orissa Tenancy Act, 1913, is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the sale shall not, without the consent in writing of the certificate-debtor, take place until after the expiration of at least thirty days, calculated from—

(a) the date on which a copy of the sale proclamation has been affixed in a conspicuous part of the office of the Certificate-officer, or

(b) the date on which the sale proclamation has been published in the Malkachari or rent office of the estate and at the local thana,

whichever is later.

Adjustment
or stoppage
of sale.

28. (1) The Certificate-officer may, in his discretion, adjourn any sale hereunder to a specified day and hour; and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the office of the Certificate-officer, no such adjournment shall be made without the leave of the Certificate-officer.

[¹] Printed in Vol. I of this Code.

[²] Printed ante, p. 486.

(Schedule II.)

(2) Where a sale is adjourned under sub-rule (1) for a longer period than seven days, a fresh proclamation under rule 26 shall be made, unless the certificate-debtor consents to waive it.

(3) Every sale shall be stopped, if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid to the Certificate-officer who ordered the sale.

29. Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Certificate-officer by the officer or other person holding the sale, and shall, at the instance of either the certificate-holder or the certificate-debtor, be recoverable from the defaulting purchaser under the procedure provided by this Act.

Defaulting purchaser answerable for loss on re-sale.

30. No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Restriction on bidding of purchase by officers.

31. (1) Where the property to be sold is agricultural produce, the sale shall be held—

Sale of agricultural produce.

(a) if such produce is a growing crop—on or near the land on which such crop has grown, or

(b) if such produce has been cut or gathered—at or near the threshing-floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited :

Provided that the Certificate-officer may direct the sale to be held at the nearest place of public resort if he is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up, for sale,—

(a) a fair price, in the estimation of the person holding the sale, is not offered for it; and

(b) the owner of the produce, or a person authorized to act in his behalf applies to have the sale postponed till the next day, or, if a market is held at the place of sale, the next market day,

the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce.

32. (1) Where the property to be sold is a growing crop, and the crop from its nature admits of being stored but has not yet been stored, the day

Special provisions relating to

(Schedule II.)

owing

of the sale shall be so fixed, as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered; and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering the crop.

Sale by
public
auction.

33. (1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the certificate-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively, bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

Irregularity
not to vitiate
sale, but any
person
injured may
sue.

34. No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a Civil Court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Delivery of
movable
property,
debts and
shares.

35. (1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable property in the possession of some person other than the certificate-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession, prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a Corporation, the delivery thereof shall be made by a written order of the Certificate-officer prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser on receiving payment of any dividend or interest thereon, and the manager, secretary or other

(Schedule II.)

proper officer of the Corporation from permitting any such transfer or making any such payment to any person except the purchaser.

36. (1) Where the execution of a document, or the endorsement of the party in whose name a negotiable instrument or a share in a Corporation is standing, is required to transfer such negotiable instrument or share, the Collector, or such officer as he may appoint in this behalf, may execute such document or make such endorsement as may be necessary; and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

Transfer of negotiable instruments and shares.

(2) Such execution or endorsement may be in the following form, namely:—

A B, by C D, Collector of the district of _____, in a proceeding under the Bihar and Orissa Public Demands Recovery Act, 1914, against A B.

(3) Until the transfer of such negotiable instrument or share, the Certificate-officer may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

37. In the case of any movable property not hereinbefore provided for, the Certificate-officer may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

Vesting order in case of other property.

Sale of Immovable Property.

VIII of 1885
II of 1913.

38. (1) When a tenure or a holding at fixed rates, situated in an area in which [1] Chapter XIV of the Bengal Tenancy Act, 1885, or [2] Chapter V of the Orissa Tenancy Act, 1913, is in force, has been advertised under rule 25 for sale in execution of a certificate for arrears of rent due in respect thereof, it shall be put up to auction subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the certificate and the costs of the sale, the tenure or holding shall be sold subject to such incumbrances.

Sale of tenure or holding at fixed rates, subject to registered and notified incumbrances.

VIII of 1885.

(2) The purchaser at such sale may, in manner provided by section 167 of the Bengal Tenancy Act, 1885, and not otherwise, annul any incumbrance upon the tenure or holding, not being a registered and notified incumbrance.

39. (1) If the bidding for a tenure or a holding at fixed rates, put up to auction under rule 38, does not reach a sum sufficient to liquidate the

Sale of tenure or holding at fixed rates,

[1] Printed in Vol. I of this Code.

[2] Printed ante, p. 409.

(Schedule II.)

with power
to avoid all
incum-
brances.

amount of the certificate and costs as aforesaid, and if the certificate-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the person holding the sale shall adjourn the sale and make a fresh proclamation under rule 25 announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances, upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this rule may, in manner provided by section 167 of the Bengal Tenancy Act, 1885, or section 221 of the VIII of 1885 Orissa Tenancy Act, 1913, and not otherwise, annul any incumbrance on II of 1913. the tenure or holding.

Sale of occu-
pancy hold-
ing, with
power to
avoid all
incum-
brances.

40. (1) When an occupancy-holding, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885,^[1] or Chapter XVI of the VIII of 1885 Orissa Tenancy Act, 1913,^[2] is in force, has been advertised under rule II of 1913. 25 for sale in execution of a certificate for arrears of rent due in respect thereof, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this rule may, in manner provided by section 167 of the Bengal Tenancy Act, 1885,^[1] or section 221 of the VIII of 1885 Orissa Tenancy Act, 1913,^[2] and not otherwise, annul any incumbrance II of 1913. on the holding.

Rules 38 to
40 not to
apply in
certain cases
to certificate-
holders who
are co-sharer
landholders.

41. Where the certificate-holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of rules 38, 39 and 40 shall not apply.

Postpone-
ment of sale
to enable
certificate-
debtor to
raise amount
due under
certificate.

42. (1) When an order for the sale of immovable property has been made, if the certificate-debtor can satisfy the Certificate-officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the certificate-debtor, the Certificate-officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case the Certificate-officer shall grant a certificate to the certificate-debtor, authorising him, within a period to be mentioned there-

^[1] Printed in Vol. I of this Code.
^[2] Printed ante, p. 486.

(Schedule II.)

in, and notwithstanding anything contained in section 8 or section 20, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the certificate-debtor, but to the Certificate-officer:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Certificate-officer.

43. (1) When a tenure or holding, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885,^[1] or Chapter XVI of the Orissa Tenancy Act, 1913,^[2] is in force, is put up for sale in execution of a certificate for arrears of rent due in respect thereof, the certificate-debtor shall not bid for or purchase the tenure or holding.

Prohibition of purchase of tenure or holding by certificate-debtor.

(2) If a certificate-debtor purchases, by himself or through another person a tenure or holding so sold, the Certificate-officer may, if he thinks fit, on the application of the certificate-holder or any other person interested in the sale, by order, set aside the sale; and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the certificate-debtor.

44. On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent. on the amount of his purchase-money, to the officer or other person conducting the sale; and, in default of such deposit, the property shall forthwith be re-sold.

Deposit by purchaser and re-sale in default.

45. The full amount of purchase-money payable shall be paid by the purchaser to the Certificate-officer on or before the fifteenth day from the sale of the property.

Time for payment of purchase-money in full.

46. In default of payment within the period mentioned in rule 45 the deposit may, if the Certificate-officer thinks fit, after defraying the expenses of the sale be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Procedure in default of payment.

47. Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

Notification on re-sale.

48. Where the property sold is a share of undivided immovable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Bid of co-sharer to have preference.

[¹] Printed in Vol. I of this Code.

[²] Printed *ante*, p. 486.

(Schedule II.)

return of
purchase-
money in
certain cases.

49. Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty (if any) referred to in clause (b) of section 28, and such interest as the Certificate-officer may allow, shall be paid to the purchaser.

Certificate to
debtor.

50. (1) Where a sale of immovable property has become absolute, the Certificate-officer shall grant a certificate specifying the property sold and the name of the person who at the time of the sale is declared to be the purchaser.

(2) Such certificate shall bear the date of the day on which the sale became absolute.

Delivery of
property in
occupancy of
certificate-
debtor.

51. Where the immovable property sold is in the occupancy of the certificate-debtor, or of some person on his behalf, or of some person claiming under a title created by the certificate-debtor subsequently to the service of the notice issued under section 7, and a certificate in respect thereof has been granted under rule 50, the Certificate-officer shall, on the application of the purchaser, order delivery to be made by putting such purchaser, or any person whom he may appoint to receive delivery on his behalf, in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Delivery of
property in
occupancy of
tenant or
other person.

52. Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under rule 50, the Certificate-officer shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of a sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the certificate-debtor has been transferred to the purchaser.

Arrest and Detention.

Discretionary
power to
permit certi-
ficate-debtor
to show
cause against
arrest in
prison.

53. (1) The Certificate-officer may, before issuing a warrant for the arrest of the certificate-debtor, issue a notice calling upon him to appear before the Certificate-officer, on a day to be specified in the notice, and show cause why he should not be committed to the civil prison.

(2) Where appearance is not made in obedience to the notice, the Certificate-officer may issue a warrant for the arrest of the certificate-debtor.

Subsistence
allowance.

54. (1) When a certificate has been signed either in accordance with the provisions of section 4, or on a requisition made under section 5, no certificate-debtor shall be arrested in execution of the certificate unless

(Schedule II.)

and until the certificate-holder pays into Court such sum as the Certificate-officer thinks sufficient for the subsistence of the certificate-debtor from the time of his arrest until he can be brought before the Certificate-officer.

(2) When a certificate-debtor is committed to the civil prison in execution of a certificate, the Certificate-officer shall fix for his subsistence such monthly allowance as he may be entitled to according to the scale fixed by the Local Government for the subsistence of arrested judgment-debtors, or, where no such scale has been fixed, as the Certificate-officer considers sufficient with reference to the class to which the certificate-debtor belongs.

(3) The monthly allowance fixed by the Certificate-officer shall be supplied, by the person upon whose requisition the certificate was signed, by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the Certificate-officer for such portion of the current month as remains unexpired before the certificate-debtor is committed to the civil prison; and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the certificate-holder for the subsistence of the certificate-debtor in the civil prison shall be deemed to be costs in the proceeding:

Provided that the certificate-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

SUPPLEMENTAL.

55. (1) Every Certificate-officer shall cause to be kept in his office a Register of register of certificates filed in his office under this Act, and shall cause ^{certificates.} particulars of all such certificates to be entered in such register.

(2) Such register shall be open during office hours, for not less than two hours daily, and at such time as may be fixed by the Collector, for inspection by any person who desires to inspect the same; and a fee of one anna shall be chargeable for every such inspection.

56. (1) Payment of the amount due under any certificate may be made ^{Payment by} by instalments, if the Certificate-officer in whose office the certificate is ^{instalments.} filed so directs.

(2) The payment of every such instalment shall be entered in the register referred to in rule 55.

57. When a copy of certificate has been sent to another officer under ^{Remittance} section 13, sub-section (1), all sums received by such officer under such ^{to Certificate-} certificate shall be remitted by him to the Certificate-officer in whose office ^{officer of} sums received ^{under a certi-} the original certificate is filed. ^{cate trans-}ferred for ^{execution.}

(Schedule II.)

try of
satisfaction.

58. When the whole or any portion of the amount due under a certificate has been realized, the Certificate-officer in whose office the original certificate is filed shall cause an entry of the fact to be made upon the certificate and in the register referred to in rule 55.

ommunica-
tion of
tion
other per-
ons.

59. When a copy of a certificate has been sent to another officer under section 13, sub-section (1),

or when a certificate has been signed upon a requisition,

any satisfaction of the certificate, whether in whole or in part, shall be certified to such officer, or to the sender of such requisition, as the case may be.

FORMS.

Forms in
Appendix.

60. The forms set forth in the Appendix shall be used, with such variations as circumstances may require.

Other forms.

61. Where no form is set forth in the Appendix, the appropriate form in use in Civil Courts shall be used, with such modifications as may appear to be necessary.

[1914.] *The Bihar and Orissa Public Demands (Certification) Act, 1914.*

(Appendix.)

APPENDIX.

FORMS.

(See rule 60.)

FORM No. 1.

CERTIFICATE OF PUBLIC DEMAND.

(See sections 4 and 6.)

Filed in the Office of the Certificate-officer of (name of District.)

No. of Certificate.	Name and address of certificate-holder.	Name and address of certificate-debtor.	any] for which this certificate is signed, and period for which such demand is due.	Further particulars of the public demand for which this certificate is signed.
1	2	3	4	5

I hereby certify that the above-mentioned sum of Rs. _____ is due to the above-named _____ from the above-named _____

[If the certificate is signed on requisition sent under section 5, add—]

I further certify that the above-mentioned sum of Rs. _____ is justly recoverable, and that its recovery by suit is not barred by law.

Dated this _____ day of _____ 19 _____

A. B.,

Certificate-officer

(Form 2.)

FORM No. 2.

REQUISITION FOR A CERTIFICATE.

(See section 5.)

To the Certificate-officer of the district of .

Name of certificate-debtor.	Address of certificate-debtor.	Amount of public demand for which this requisition is made.	Nature of the public demand for which this requisition is made.
1	2	3	4

I request you to recover the above-mentioned sum of Rs. which I am satisfied, after inquiry, is due from the said in respect of

Verified by me on the day of 19

A. B.,
(Designation.)

FORM No. 3.

NOTICE TO CERTIFICATE-DEBTOR.

(See section 7.)

To (name of Certificate-debtor).

You are hereby informed that a certificate against you for Rs. due from you on account of , has this day been filed in my office under section of the Bihar and Orissa Public Demands Recovery Act 1914. If you deny your liability to pay the said sum of Rs. you may, within thirty days from the service of this notice, file in my office

(Form 4.)

a petition denying liability, in whole or in part. If, within the said thirty days, you fail to file such a petition, or if you fail to show cause, or do not show sufficient cause, why such certificate should not be executed, it will be executed, under the provisions of the said Act, unless you pay Rs. (Rs. on account of the demand and Rs. , on account of costs of realization) into my office. Until the said amount is so paid, you are hereby prohibited from alienating your immovable property, or any part of it, by sale, gift, mortgage or otherwise. If you in the meantime conceal, remove or dispose of any part of your movable property, the certificate will be executed immediately.

A copy of the certificate above-mentioned is hereto annexed.

You may remit the amount by money-order, quoting the number and year of the certificate.

Dated the day of , 19 .

A. B.,

Certificate-officer of

FORM No. 4.

PETITION DENYING LIABILITY.

(See section 9.)

To

THE CERTIFICATE-OFFICER OF

The humble petition of (name of petitioner) of (address).

SHOWETH—

That a certificate No. of (year), for the sum of Rs. , has been filed against your petitioner in your office under section of the Bihar and Orissa Public Demands Recovery Act, 1914.

That your petitioner respectfully denies his liability to pay the said sum of Rs. (or, where the liability to pay part is admitted, denies his liability to pay more than Rs.), and this for the following reasons:—

That the facts above stated are true to the best of your petitioner's knowledge and belief.

600 *The Bihar and Orissa Public Demands Recovery [B. & O. Act*
Act, 1914.

(Forms 5 and 6.)

Your petitioner therefore respectfully prays that the said certificate may be set aside (*or modified or varied*).

A. B.,
(*Petitioner.*)

FORM No. 5.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE.

(*See section 29.*)

To

Whereas the undermentioned property was sold on the day
of 19 , in execution of certificate No. , dated the
19 . And whereas , the certificate-holder [*or*
certificate debtor] has applied to me to set aside the sale of the said pro-
perty on the ground that

Take notice that if you have any cause to show why the said applica-
tion should not be granted, you should appear with your proofs in this
office on the day of , 19 , when the said application
will be heard and determined.

Given under my hand and seal, this day of 19 .

Description of property.

Certificate-officer.

FORM No. 6.

WARRANT OF ARREST.

(*See section 38.*)

	Rs.	AS.	P.
Original demand			
Interest			
Costs			
Execution			
Total			

WHEREAS a certificate No.
was filed in this office on the , 19 , under section of the
Bihar and Orissa Public Demands Recovery Act, 1914,
against certificate-debtor,
and the sum of Rs. ,
as noted in the margin, is due
from him in respect of the said
certificate; and whereas the said
sum of Rs. has not been

(Form 7.)

paid to the certificate-holder in satisfaction of the said certificate; these are to command you to arrest the said certificate-debtor, and, unless the said certificate-debtor should pay to you the said sum of Rs. , together with Rs. ,

for the cost of executing this process, or should produce a receipt showing payment of the amount to the Certificate-officer, to bring him before the Court with all convenient speed.

You are further commanded to return this warrant on or before the day of , 19 , with an endorsement certifying the day on which and the manner in which it has been executed, or the reason why it has not been executed.

Dated this day of , 19 .

Certificate-officer.

FORM No. 7.

ORDER COMMITTING CERTIFICATE-DEBTOR TO THE CIVIL PRISON.

(See section 38.)

To

The Officer in charge, of the Civil Prison at

WHEREAS , who has been brought before me this day of , 19 , under a warrant in execution of certificate No. , filed in this office on the , 19 , under section of the Bihar and Orissa Public Demands Recovery Act, 1914, and by which certificate it was ordered that the said should pay

and whereas the said has not paid the said sum nor satisfied me that he is entitled to be discharged from custody;

You are hereby, in the name of the King-Emperor of India, commanded and required to take and receive the said

into the Civil Prison and keep him imprisoned therein for a period not exceeding or until the said certificate shall be fully satisfied, or the said shall be otherwise entitled to be released according to the terms and provisions of section 40 or section 41 of the said Act; and I hereby fix annas

602 *The Bihar and Orissa Public Demands Recovery [B. & O. Act
Act, 1914.*

(Form 8.)

per diem as the rate of the monthly allowance for the subsistence of the
said _____ during his confinement
under this order of committal.

Dated this _____ day of _____, 19 _____

Certificate-officer.

FORM No. 8.

NOTICE TO LEGAL REPRESENTATIVE OF CERTIFICATE-DEBTOR.

(See section 52.)

To (name of legal representative).

You are hereby informed that a certificate against
deceased, for Rs. _____ due from him on account of _____ was filed
in this office on the _____, 19 _____, under section _____ of the Bihar and
Orissa Public Demands Recovery Act, 1914, and that a demand of
Rs. _____, in respect of the said certificate proceeding is due from you
as the legal representative of the said _____, deceased. If you deny
your liability to pay the said sum of Rs. _____, you may, within thirty
days, from the service of this notice, file in my office a petition denying
liability, in whole or in part. If, within the said thirty days, you fail
to file such a petition, or if you fail to show cause, or do not show sufficient
cause, why such certificate should not be executed it will be executed,
under the provisions of the said Act, unless you pay Rs. _____ (Rs.
on account of the demand and Rs. _____ on account of costs of realization)
into my office. Until the said amount is so paid, you are hereby prohibit-
ed from alienating your immovable property, or any part of it, by sale,
gift, mortgage or otherwise. If you in the meantime conceal, remove or
dispose of any part of your movable property, the certificate will be
executed immediately.

A copy of the certificate above-mentioned is hereto annexed.

You may remit the amount by money-order, quoting the number and
year of the certificate.

Dated this _____ day of _____, 19 _____

A. B.,

Certificate-officer of

(Forms 9 and 10.)

FORM No. 9.

NOTICE TO CERTIFICATE-HOLDER.

(Section 21.)

WHEREAS _____ has made application to this Court for the removal of attachment on _____ placed at your instance in execution of certificate No. _____ of 19 _____; this is to give you notice to appear before me on _____ the _____ day of _____, 19 _____, either in person or by a pleader duly instructed to support your claim, as attaching creditor.

GIVEN under my hand and seal, this _____ day of _____, 19 _____.

Certificate-officer.

FORM No. 10.

WARRANT OF SALE OF PROPERTY.

(See rule 24.)

To

THE _____

THESE are to command you to sell by auction, after giving _____ days' previous notice, by affixing the same in this office, and after making due proclamation, the undermentioned property attached in execution of certificate No. _____ in favour of _____, or so much of the said property as shall realize the sum of Rs. _____, being the _____ of the said certificate and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the _____ day of _____, 19 _____, with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and seal, this _____ day of _____, 19 _____.

Specification of property:—

Certificate-officer.

604 *The Bihar and Orissa Public Demands Recovery [B. & O. Act
Act, 1914.*

(Forms 11 and 12.)

FORM No. 11.

NOTICE OF THE DAY FIXED FOR SETTLING A SALE PROCLAMATION.

(See rule 25.)

CERTIFICATE-DEBTOR.

To

WHEREAS, in execution of certificate No. of a sale is about to be held of your property mentioned below; you are hereby informed that the day of , 19 , has been fixed for settling the terms of the proclamation of sale.

The total amount due from you in respect of the certificate including costs and interest is

GIVEN under my hand and seal, this day of , 19 .

Specification of property:—

Certificate-officer.

FORM No. 12.

PROCLAMATION OF SALE.

(See Rule 25.)

NOTICE is hereby given that, under rule 24 in Schedule II to the Bihar and Orissa Public Demands Recovery Act, 1914, an order has been passed by me for the sale of the property mentioned in the annexed schedule, in satisfaction of the claim of the certificate-holder under the certificate mentioned in the margin^[1] amounting, with costs and interest up to date of sale, to the sum of

[1] Certificate No. of 19 , under which is the certificate-holder and is the certificate-debtor.

The sale will be by public auction, and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the certificate-debtor above-named as mentioned in the schedule below.

(Form 12.)

In the absence of any order of postponement, the sale will be held by
commencing at o'clock on the at the monthly sale
at

In the event, however, of the debt above specified, and of the
costs of the sale, being tendered or paid before the knocking down of any
lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally
or by duly authorized agent. The following are the further

Conditions of Sale.

The particulars specified in the schedule below have been stated to the
best of the information of the Certificate-officer; but the Certificate-officer
will not be answerable for any error, mis-statement or omission in this
proclamation.

2. The amount by which the biddings are to be increased shall be deter-
mined by the officer conducting the sale. In the event of any dispute
arising as to the amount bid, or as to the bidder, the lot shall at once be
again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot,
provided always that he is legally qualified to bid, and provided that it
shall be in the discretion of the officer holding the sale to decline acceptance
of the highest bid when the price offered appears so clearly inadequate as
to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer con-
ducting the sale to adjourn it, subject always to the provisions of rule 28
in Schedule II to the Bihar and Orissa Public Demands Recovery Act,
1914.

5. In the case of movable property, the price of each lot shall be paid
at the time of sale or as soon after as the officer holding the sale directs,
and in default of payment the property shall forthwith be again put up
and re-sold.

6. In the case of immovable property, the person declared to be the
purchaser shall pay immediately after such declaration a deposit of 25
per cent. on the amount of his purchase-money to the officer conducting the
sale, and in default of such deposit the property shall forthwith be put up
again and re-sold.

7. The full amount of the purchase-money shall be paid by the pur-
chaser before the office of the Certificate-officer closes on the fifteenth day
after the sale of the property, exclusive of such day, or, if the fifteenth

608 *The Bihar and Orissa Public Demands Recovery* [B. & O. Act
Act, 1914.

(Forms 16 and 17.)

in execution of certificate No. , dated the , 19 , and that
the said sale has been duly confirmed by me.

GIVEN under my hand and seal, this day of , 19 .

Certificate-officer.

FORM No. 16.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN
EXECUTION.

(See rule 51.)

To

The

WHEREAS has become the certified purchaser
of at a sale in execution of certificate No. dated
the , 19 ; you are hereby ordered to put the said
the certified purchaser, as aforesaid, into possession of the same.

GIVEN under my hand and seal, this day of , 19 .

Certificate-officer.

FORM No. 17.

NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE.

(See rule 53.)

To

WHEREAS has made application to me for
execution of certificate No. of 19 , by arrest and imprisonment of
your person ; you are hereby required to appear before me on the day
of , 19 ; to show cause why you should not be committed
to the Civil Prison in execution of the said certificate.

GIVEN under my hand and seal, this day of , 19 .

Certificate-officer.

(Schedule III.)

SCHEDULE III.

(See section 69.)

Part I.—Amendments of the Bengal Tenancy Act, 1885.

Part II.—Amendments of the Orissa Tenancy Act, 1913.

Part III.—Amendments of the Chota Nagpur Tenancy Act, 1908

PART I.

AMENDMENTS OF THE BENGAL TENANCY ACT, 1885.[¹]

VIII of 1885. I. For Chapter XIIIA of the Bengal Tenancy Act, 1885,^[1] the following shall be substituted, namely:—

[Printed in Vol. I, pp. 543-545.]

III of 1885. II. For sub-section (I) of section 158B of the Bengal Tenancy Act, 1885,^[1] the following shall be substituted, namely:—

[Printed in Vol. I, pp. 545-546.]

VIII of 1885. III. (I) In sub-section (I) of section 167 of the Bengal Tenancy Act, 1885,^[1] after the words "the foregoing sections" the words "or under the Bihar and Orissa Public Demands Recovery Act, 1914," shall be inserted.

(2) In sub-section (4) of the said section—

(a) after the words "a decree" the words "or a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914," shall be inserted, and

(b) after the words "this Chapter" the words "or that Act" shall be inserted.

VIII of 1885. IV. In sub-section (I) of section 171 of the Bengal Tenancy Act, 1885,^[1] after the words "under this Chapter" the following shall be inserted, namely:—

"or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bihar and Orissa Public Demands Recovery Act, 1914."

(Schedule III.)

V. In section 172 of the Bengal Tenancy Act, 1885,^[1] for the words VIII of "When a tenure or holding is advertised for sale under this Chapter in execution of a decree against a superior tenant defaulting" the following shall be substituted, namely:—

"When a tenure or holding is advertised for sale—

- (a) under this Chapter, in execution of a decree against a superior tenant defaulting, or
- (b) in execution of a certificate, signed under the Bihar and Orissa Public Demands Recovery Act, 1914, for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting."

PART II.

AMENDMENTS OF THE ORISSA TENANCY ACT, 1913.^[2]

(I) For Chapter XV of the Orissa Tenancy Act, 1913,^[2] the following shall be substituted, namely:—

[*Printed ante, pp. 484, 485.*]

II. For sub-section (1) of section 212 of the Orissa Tenancy Act, 1913,^[2] the following shall be substituted, namely:—

[*Printed ante, p. 486.*]

III. (1) In sub-section (1) of section 221 of the Orissa Tenancy Act, 1913,^[2] after the words "the foregoing sections" the words "or under the Bihar and Orissa Public Demands Recovery Act, 1914," shall be inserted.

(2) In sub-section (4) of the said section—

- (a) after the words "a decree" the words "or a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914," shall be inserted, and
- (b) after the words "this Chapter" the words "or that Act" shall be inserted.

^[1] Printed in Vol. I of this Code.
^[2] Printed *ante*, p. 401.

(Schedule III.)

IV. In sub-section (1) of section 225 of the Orissa Tenancy Act, 1913,[¹] after the words "under this Chapter" the following shall be substituted, namely:—

"or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bihar and Orissa Public Demands Recovery Act, 1914."

V. In section 226 of the Orissa Tenancy Act, 1913,[¹] for the words "when a tenure or holding is advertised for sale under this Chapter in execution of a decree against a superior tenant defaulting" the following shall be substituted, namely:—

"When a tenure or holding is advertised for sale—

(a) under this Chapter, in execution of a decree against a superior tenant defaulting, or

(b) in execution of a certificate, signed under the Bihar and Orissa Public Demands Recovery Act, 1914, for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting."

PART III.

AMENDMENTS OF THE CHOTA NAGPUR TENANCY ACT, 1908.[²]

I. For section 244 of the Chota Nagpur Tenancy Act, 1908,[²] the following shall be substituted, namely:—

[*Printed ante, pp. 328-330.*]

II. In sections 47 and 248 of the Chota Nagpur Tenancy Act, 1908,[²] the words and figures "the Bihar and Orissa Public Demands Recovery Act, 1914," shall be substituted for the words and figures "the Public Demands Recovery Act, 1895."

[¹] Printed *ante*, p. 401.

[²] Printed *ante*, p. 247.

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(3) Every order made with the approval of the Commis-

(4) When any such order is made in such manner as to be published, the conclusions of the proceedings under this Act

Refunding
or crediting
of reduction
to land-
holder.

16. (1) If, prior to the publication of any scheme under section 15 in respect of any such scheme, the conclusions of the proceedings upon such publication are favourable, the landholder entitled under such order

(2) If, when any order has been duly published, the conclusions of the proceedings upon such scheme still remain favourable, the landholder is entitled under such order

Proportion-
ate reduction
in amounts
recoverable
by landholder
from tenants.

17. (1) When any order is made under section 16 of the said Act, the landholder under section 42, clause (a) of the said Bengal Drainage Act, 1906, now holding land imm

(2) Any such persons may, at their option,—

(a) to refund the amount of the reduction under section (1)

(b) to take credit for the amount of the reduction between

Proportionate
reduction in
amounts
recoverable
by superior
tenants
from under-
tenant.

18. (1) When an order is made for the reduction under section 51A of the said Act, the landholder held or are now hold reduced.

(2) Any such persons may, at their option,—

(a) to a refund of the amount of the reduction under section (1)

(b) to take credit for the amount of the reduction between

